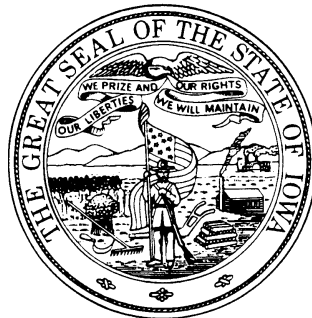


# IOWA COURT RULES

**FIFTH EDITION**

**February 2016 Supplement**



Published under the authority of Iowa Code section 2B.5(2).

STEPHANIE A. HOFF  
ADMINISTRATIVE CODE EDITOR

## PREFACE

The Fifth Edition of the Iowa Court Rules was published in July 2009 pursuant to Iowa Code section 2B.5(2). Subsequent updates to the Iowa Court Rules, as ordered by the Supreme Court, are published in electronic format only and include chapters that have been amended or adopted.

The Iowa Court Rules and related court documents are available on the Internet at <https://www.legis.iowa.gov/IowaLaw/courtRulesListing.aspx>.

To receive e-mail notification of the publication of a Supplement to the Iowa Court Rules, subscribe at <https://www.legis.iowa.gov/Subscribe/subscriptions.aspx>.

**Inquiries:** Inquiries regarding access to the Iowa Court Rules should be directed to the Legislative Services Agency's Computer Services Division Help Desk at (515)281-6506.

**Citation:** The rules shall be cited as follows:

Chapter 1	Iowa R. Civ. P.
Chapter 2	Iowa R. Crim. P.
Chapter 5	Iowa R. Evid.
Chapter 6	Iowa R. App. P.
Chapter 32	Iowa R. of Prof'l Conduct
Chapter 51	Iowa Code of Judicial Conduct

All other rules shall be cited as "Iowa Ct. R."

**Supplements:** Supplements to the Fifth Edition of the Iowa Court Rules have been issued as follows:

August 2009	December 2010	September 2013	December 2015
September 2009	February 2011	November 2013	
October 2009	January 2012	December 2013	
November 2009	May 2012	January 2014	
December 2009	June 2012	March 2014	
January 2010	August 2012	April 2014	
February 2010	September 2012	June 2014	
March 2010	December 2012	December 2014	
May 2010	March 2013	January 2015	
June 2010	May 2013	April 2015	
August 2010	June 2013	May 2015	
September 2010	August 2013	October 2015	

## **February 2016 Supplement**

### **Changes in this supplement**

Chapters 34 to 36..... Replaced

Rule 39.18..... Amended

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## **CHAPTER 34**

### **ADMINISTRATIVE AND GENERAL PROVISIONS**

#### **GRIEVANCE COMMISSION AND ATTORNEY DISCIPLINARY BOARD**

**Rule 34.1 Iowa Supreme Court Grievance Commission.**

**34.1(1)** There is hereby created the Iowa Supreme Court Grievance Commission (grievance commission) consisting of 25 attorneys from judicial election district 5C, 15 attorneys from judicial election district 5A, 10 attorneys from judicial election district 6, and 5 attorneys from each other judicial election district, to be appointed by the supreme court. The supreme court will designate one attorney as grievance commission chair. The supreme court will accept nominations for appointment to the grievance commission from any association of attorneys that maintains an office within the State of Iowa or any attorney licensed in Iowa. The grievance commission also consists of no fewer than 5 or more than 35 laypersons appointed by the court. Members must serve no more than two three-year terms, and no member who has served two full terms is eligible for reappointment. A member serving as a primary or alternate member of a division of the grievance commission at the time the member's regular term ends must, nonetheless, continue to serve on that division until the division has concluded its duties with respect to the complaint for which the division was appointed.

**34.1(2)** Grievance commission members are referred to as commissioners. The grievance commission or a duly appointed division of the grievance commission must hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Rules of Professional Conduct, the laws of the United States, and the laws of the State of Iowa or any other state or territory within their respective jurisdictions, by attorneys within the jurisdiction of the grievance commission as described in rule 34.10. The grievance commission has such other powers and duties as these rules provide.

**34.1(3)** A grievance commission member must not represent, in any stage of the investigative or disciplinary proceedings, any attorney against whom an ethical complaint is filed. A grievance commission member may represent an attorney in a malpractice, criminal, or other matter; however, the member must decline representation of the attorney in any stage of the investigative or disciplinary proceedings and must not participate in any hearing or other proceeding before the grievance commission. These prohibitions extend to attorneys associated in a firm with a grievance commission member with respect to those cases in which the member participates or has participated as a member of a division or as an alternate.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.1 formerly appeared at Iowa Court Rule 35.1. It is amended to delete the requirement for annual designation of the grievance commission chair. The requirement for administrative committee review of the annual grievance commission budget also is removed. Responsibility for formulation and submission of the annual budget for the grievance commission is addressed in chapter 49 of the Iowa Court Rules. Jurisdictional requirements are deleted from the rule and replaced by a reference to the new jurisdiction provision in rule 34.10. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.2 Grievance commission; vice chair duties.** The director of the office of professional regulation must designate a clerk and an assistant clerk for the grievance commission. In the chair's absence or inability to act, the vice chair must perform all duties of the chair.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.2 formerly appeared as Iowa Court Rule 36.1. It is amended to remove the specific designation of the assistant director for boards and commissions as the grievance commission clerk to provide more flexibility in assignment of duties within the office of professional regulation. The provision for short-form references to the grievance commission is moved to rule 34.1(1). [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.3 Substitutions and vacancies on the grievance commission.**

**34.3(1)** In the absence of the grievance commission chair and vice chair or inability of the chair and vice chair to perform any of the duties provided in this chapter, the grievance commission may designate some other member as acting chair to perform the duties.

**34.3(2)** In the absence or inability of a division president to perform any of the duties provided in this chapter, the division may designate some other member as acting president to perform the duties. If a vacancy occurs in any division from any cause, the chair, vice chair, or acting chair of the grievance commission must fill the vacancy.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.3 formerly appeared as Iowa Court Rule 36.16. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.4 Confidentiality of grievance commission.**

**34.4(1)** All records, papers, proceedings, meetings, and hearings of the grievance commission will be confidential unless the grievance commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent's license.

**34.4(2)** If the grievance commission recommends that the supreme court reprimand the respondent or suspend or revoke the respondent's license, the grievance commission's report of reprimand or recommendation for license suspension or revocation is a public document upon its filing with the supreme court clerk. In addition, if the grievance commission recommends the supreme court reprimand the respondent or suspend or revoke the respondent's license, the complaint filed with the grievance commission by the Iowa Supreme Court Attorney Disciplinary Board is a public document.

**34.4(3)** Any other records and papers of the grievance commission concerning any complaint must remain privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent, the attorneys, or the attorneys' agents involved in the proceeding before the grievance commission. The respondent, the attorneys, or the attorneys' agents involved in the proceeding before the grievance commission must not disclose any records and papers of the grievance commission concerning any complaint to any third parties unless disclosure is required in the prosecution or defense of disciplinary charges. The confidential records and papers of the grievance commission concerning any complaint are not admissible in evidence in a judicial or administrative proceeding other than the formal grievance commission hearing under rule 36.17.

**34.4(4)** Every witness in every proceeding under this chapter must swear or affirm to tell the truth and not to disclose the existence of the proceedings or the identity of the respondent until the proceeding is no longer confidential.

**34.4(5)** All communications, papers, and materials concerning any complaint that may come into the hands of a grievance commission member must remain confidential, and the member must keep them in a safe and secure place.

**34.4(6)** The grievance commission clerk, the chair, or a grievance commission member the chair designates may issue one or more clarifying announcements when the subject matter of a complaint is of broad public interest and failure to supply information on the status and nature of the formal proceedings could threaten public confidence in the administration of justice. No other grievance commission member may make any public statement concerning any matter before the grievance commission without prior approval of the grievance commission.

**34.4(7)** Nothing in this chapter prohibits the grievance commission from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located, or to attorney disciplinary and bar admission authorities in other jurisdictions or from releasing any information regarding possible violations of the Iowa Code of Judicial Conduct to the Commission on Judicial Qualifications.

**34.4(8)** For purposes of this rule, a grievance commission recommendation that a respondent not licensed to practice law in Iowa be publicly censured or reprimanded or be ordered, enjoined, or otherwise directed not to practice law in Iowa for any period of time is deemed the equivalent of a recommendation to reprimand, suspend, or revoke.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.4 formerly appeared as Iowa Court Rule 36.18. Rule 34.4(8) is added to clarify application of the public disclosure rule to commission recommendations in cases involving respondents not licensed in Iowa. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.5 Retention of grievance commission records.**

**34.5(1)** The grievance commission must permanently retain the complaint, answer, amendments to the complaint and answer, and the grievance commission recommendation for discipline or other disposition for each grievance case. Grievance commission files and records relating to a grievance complaint otherwise may be destroyed after the death of the respondent. For purposes of this rule, destruction of paper records after the records have been transferred to computer storage is permitted immediately after the transfer.

**34.5(2)** Notwithstanding any required destruction of documents, the grievance commission will permanently maintain a summary of all grievance matters containing the name of the respondent attorney, the disposition, and the respective dates the matter was opened and closed.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.5 formerly appeared as Iowa Court Rule 36.19. [Court Order January 26, 2016, effective April 1, 2016]

## ATTORNEY DISCIPLINARY BOARD

**Rule 34.6 Iowa Supreme Court Attorney Disciplinary Board.**

**34.6(1)** There is hereby created the Iowa Supreme Court Attorney Disciplinary Board (disciplinary board). The disciplinary board consists of nine attorney members and three laypersons appointed by the supreme court. The supreme court will designate one of the attorneys as chair. The supreme court will accept nominations for appointment to the disciplinary board from any association of attorneys that maintains an office within the State of Iowa or any attorney licensed in Iowa. Members must serve no more than two three-year terms, and no member who has served two full terms is eligible for reappointment. Disciplinary board members are appointed commissioners of the supreme court to initiate or receive and process complaints against any attorney within the jurisdiction of the disciplinary board as described in rule 34.10. Upon completion of any investigation, the board must either dismiss the complaint, admonish or reprimand the attorney, or file and prosecute the complaint before the grievance commission or any grievance commission division. The disciplinary board may additionally refer complaints involving attorneys who are not authorized to practice law in Iowa to the commission on the unauthorized practice of law.

**34.6(2)** A disciplinary board member must not represent, in any stage of the investigative or disciplinary proceedings, any attorney against whom an ethical complaint is filed. To avoid even the appearance of impropriety, a disciplinary board member should not represent any attorney in any malpractice, criminal, or other matter when it appears that the filing of an ethical complaint against that attorney is reasonably likely. These prohibitions extend to attorneys associated in a firm with a disciplinary board member.

**34.6(3)** The assistant director for attorney discipline of the office of professional regulation is the principal executive officer of the board. A reference in this chapter to the “assistant director” refers to the assistant director for attorney discipline of the office of professional regulation. The assistant director is responsible to the disciplinary board, to the director of the office of professional regulation, and to the supreme court for proper administration of these rules. Subject to the approval of the supreme court, the disciplinary board may employ such other persons as it deems necessary for the proper administration of this chapter. The assistant director and other disciplinary board employees will receive such compensation and expenses as the supreme court may fix upon recommendation of the director of the office of professional regulation.

**34.6(4)** The director of the office of professional regulation must, at least 60 days prior to the start of each fiscal year, submit to the supreme court for its consideration and approval a budget covering the operations of the disciplinary board for the upcoming fiscal year. This budget must include proposed expenditures for staff, support staff, office space, equipment, supplies, and other items necessary to administer the responsibilities of the disciplinary board as set out in this chapter. Supreme court approval of the budget authorizes payment as provided in the budget. A separate bank account designated as the ethics operating account of the disciplinary fund must be maintained for payment of authorized expenditures as provided in the approved budget. Moneys derived from the annual disciplinary fee set out in Iowa Court Rule 39.5 must be deposited in the ethics operating account to the extent the supreme court authorizes each year for payment of the disciplinary board’s authorized expenditures.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.6 formerly appeared as Iowa Court Rule 35.2. It is amended to delete the requirement for annual designation of the disciplinary board chair. The requirement for an administrative committee for review and submission of the annual disciplinary board budget also is removed. Responsibility for formulation and submission of the annual budget for the disciplinary board is placed with the director of the office of professional regulation, which is consistent with the budget provisions for other boards and commissions of the office of professional regulation in chapter 49 of the Iowa Court Rules. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.7 Disciplinary board advisory opinions prohibited.** The disciplinary board must not render advisory opinions, either orally or in writing.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.7 is adapted from rule 4C of the ABA Model Rules for Lawyer Disciplinary Enforcement. The supreme court adopted a similar prohibition for the disciplinary board in 2005. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.8 Retention of disciplinary board records.**

**34.8(1)** The disciplinary board must maintain files and records relating to allegations of misconduct by an attorney until destruction is authorized pursuant to the following schedule:

- a. Files and records relating to complaints the assistant director dismisses pursuant to rule 35.4(1) may be destroyed one year from the date of the last action on the file.
- b. Files and records relating to all other complaints the disciplinary board dismisses may be destroyed five years from the date of the last action on the file.
- c. All other files and records relating to allegations of respondent misconduct may be destroyed after death of the respondent.
- d. For purposes of rule 34.8(1), destruction of paper files is permitted immediately after the files have been transferred to computer storage.

**34.8(2)** Notwithstanding any required destruction of documents, the disciplinary board must permanently maintain a summary of all complaint matters containing the name of the complainant and the respondent, the disposition of the complaint, and the respective dates the complaint was opened and closed.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.8 formerly appeared as Iowa Court Rule 35.29. [Court Order January 26, 2016, effective April 1, 2016]

#### GENERAL DISCIPLINARY RULES OF GRIEVANCE COMMISSION AND DISCIPLINARY BOARD

**Rule 34.9 Effective dates.** The rules in chapters 34, 35, and 36 of the Iowa Court Rules apply prospectively and retrospectively to all alleged violations, complaints, hearings, and dispositions on which a hearing has not actually commenced before the grievance commission prior to April 1, 2016.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.9 formerly appeared as Iowa Court Rule 35.26. It is amended to make clear its application to all three chapters. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 34.10 Jurisdiction.**

**34.10(1) Attorneys admitted to practice.** Any attorney admitted to practice law in the State of Iowa, including any formerly admitted attorney with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive status or with respect to subsequent acts that amount to the practice of law or constitute a violation of the rules of this chapter or of the Iowa Rules of Professional Conduct or of any rules or code the supreme court subsequently adopts in lieu thereof, any attorney an Iowa court specially admits for a particular proceeding, and any attorney not admitted in Iowa who practices law or renders or offers to render any legal services in Iowa is subject to the disciplinary jurisdiction of the Iowa Supreme Court, the disciplinary board, and the grievance commission.

**34.10(2) Former judges.** A former judge who has resumed the status of an attorney is subject to the jurisdiction of the disciplinary board and the grievance commission not only for conduct as an attorney but also for misconduct that occurred while the attorney was a judge and that would have been grounds for discipline under the rules of professional conduct for attorneys, provided that the misconduct was not the subject of a judicial disciplinary proceeding as to which the Iowa Supreme Court has reached a final determination.

**34.10(3) Incumbent judges.** Incumbent judges are not subject to the jurisdiction of the disciplinary board or the grievance commission. However, if an incumbent judge is to be removed from office in the course of a judicial discipline or disability proceeding, the supreme court will first provide the disciplinary board and the respondent an opportunity to submit a recommendation regarding whether attorney discipline should be imposed, and if so, the extent of the discipline.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.10 is adapted from rule 6 of the ABA Model Rules for Lawyer Disciplinary Enforcement. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 34.11 Reserved.**

#### **Rule 34.12 Immunity.**

**34.12(1)** Complaints submitted to the grievance commission or the disciplinary board and testimony regarding the complaints are privileged, and no lawsuit may be based on the complaints or testimony.

**34.12(2)** Claims against members of the grievance commission, the disciplinary board, the director, assistant directors, or the staff of the office of professional regulation are subject to the Iowa Tort Claims Act set forth in Iowa Code chapter 669.

**34.12(3)** On application from the disciplinary board or the grievance commission and notice to the appropriate prosecuting authority, the supreme court may grant immunity from criminal prosecution to a witness in a disciplinary or disability proceeding.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rules 34.12(1) and 34.12(2) formerly appeared at Iowa Court Rule 35.24. Rule 34.12(3) is adapted from rule 12B of the ABA Model Rules for Lawyer Disciplinary Enforcement. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.13 Reports.** The chair of the grievance commission and the chair of the disciplinary board must, on or before February 1 of each year, submit to the supreme court a consolidated report of the number of complaints received and processed during the prior calendar year, a synopsis of each complaint, and the disposition of the complaint. The name of the attorney charged and the name of the complainant must be omitted.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.13 formerly appeared as Iowa Court Rule 35.25. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.14 Interim suspension for threat of harm.**

**34.14(1)** Upon receipt of evidence demonstrating probable cause that an attorney subject to the disciplinary jurisdiction of the supreme court has committed a violation of the Iowa Rules of Professional Conduct that poses a substantial threat of serious harm to the public, the disciplinary board must do the following:

*a.* Transmit the evidence to the supreme court with a verified petition for interim suspension pending formal disciplinary proceedings. The petition must state with particularity the disciplinary rules the attorney is alleged to have violated and the exact nature of the threat of serious harm to the public.

*b.* Promptly notify the attorney by any reasonable means that a petition has been filed and provide service of the petition.

**34.14(2)** Upon receipt of the petition and evidence, the supreme court will determine whether the disciplinary board has established by a convincing preponderance of the evidence that a disciplinary violation posing a substantial threat of serious harm to the public exists. If a disciplinary violation is established, the supreme court may enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding based on the conduct, or the court may order such other action as it deems appropriate. The order may provide that any further proceedings based on the attorney's conduct be expedited. If the supreme court enters a suspension order, the court may direct the chief judge of the judicial district in which the attorney practiced to appoint a trustee under rule 34.18.

**34.14(3)** An attorney suspended pursuant to this rule may file a petition to dissolve or modify the interim suspension order. The attorney must serve the petition on the disciplinary board's counsel and the chief judge of the judicial district in which the attorney practiced. The supreme court will promptly schedule the matter for hearing before one or more justices. The hearing must be set for a date no sooner than seven days after the petition is filed unless both parties and the court agree to an earlier date. At the hearing, the attorney has the burden of demonstrating that the suspension order should be dissolved or modified.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.14 formerly appeared as Iowa Court Rule 35.4. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.15 Suspension on conviction of a crime.**

**34.15(1)** Upon the supreme court's receipt of satisfactory evidence that an attorney has pled guilty or nolo contendere to, or has been convicted of, a crime that would be grounds for license suspension or revocation, the court may temporarily suspend the attorney from the practice of law regardless of the pendency of an appeal. Not less than 20 days prior to the effective date of the suspension, the attorney must be notified in writing, directed by restricted certified mail to the last address as shown by the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and at a designated place to show cause why such suspension should not take place. Any hearing will be informal and the strict rules of evidence will not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time.

**34.15(2)** Any attorney suspended pursuant to this rule must refrain, during the suspension, from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements,

contracts, wills, and tax returns; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**34.15(3)** For good cause shown, the supreme court may set aside an order temporarily suspending an attorney from the practice of law as provided above upon the attorney's application and a hearing in accordance with rule 34.25, but reinstatement does not terminate a pending disciplinary proceeding or bar later proceedings against the attorney.

**34.15(4)** An attorney temporarily suspended under the provisions of this rule must be promptly reinstated upon the filing of sufficient evidence disclosing that the underlying conviction of a crime has been finally reversed or set aside, but such reinstatement does not terminate a pending disciplinary proceeding or bar later proceedings against the attorney.

**34.15(5)** The clerk of any court in this state in which an attorney has pled guilty or nolo contendere to or been convicted of a crime as set forth above must, within 10 days, transmit a certified record of the proceedings to the supreme court clerk.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.15 formerly appeared as Iowa Court Rule 35.15. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 34.16 Suspension or disbarment on consent.**

**34.16(1)** An attorney subject to investigation or to a pending proceeding involving allegations of misconduct subject to disciplinary action may acquiesce to suspension or disbarment, but only by delivering to the grievance commission an affidavit stating that the attorney consents to suspension of not more than a specific duration or to disbarment and indicating the following:

*a.* The consent is freely and voluntarily given without any coercion or duress and with full recognition of all implications of the consent.

*b.* The attorney is aware of a pending investigation or proceeding involving allegations that there exist grounds for discipline, the nature of which will be specifically set forth.

*c.* The attorney acknowledges the material facts of the alleged misconduct are true.

*d.* In the event proceedings were instituted upon the matters under investigation, or if existing proceedings were pursued, the attorney could not successfully defend against the proceedings.

*e.* The facts admitted in the affidavit would likely result in the suspension or revocation of the attorney's license to practice law.

*f.* Any matters in mitigation or aggravation of the alleged misconduct.

*g.* Consent to any alternative or additional sanctions as provided in rule 36.19.

**34.16(2)** The disciplinary board must file a response to the affidavit, indicating whether the board believes the misconduct admitted in the affidavit would probably result in suspension or revocation of the attorney's license to practice law and citing any legal authorities supporting its conclusion.

**34.16(3)** Upon receipt of the affidavit and response, the grievance commission must file the affidavit and response with the supreme court clerk. The supreme court may enter an order suspending the attorney's license to practice law for a period no greater than the stipulated duration or disbarring the attorney on consent, unless the court determines the misconduct admitted in the affidavit is insufficient to support the discipline to which the attorney has consented. The supreme court may also order any of the alternative or additional sanctions to which the respondent has consented. If the supreme court determines the affidavit does not set forth facts that support imposition of the discipline to which the attorney has consented, it may either enter an order allowing the parties to supplement the affidavit or an order declining to accept the affidavit. An order declining to accept the affidavit does not bar further disciplinary proceedings against the attorney, and does not preclude the supreme court from imposing any sanction the attorney's conduct warrants upon review of a grievance commission determination.

**34.16(4)** Any order suspending or disbarring an attorney on consent is a matter of public record. If the supreme court enters an order of suspension or disbarment, the affidavit and response will be publicly disclosed.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.16 formerly appeared as Iowa Court Rule 35.16. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 34.17 Disability suspension.**

**34.17(1)** In the event an attorney is at any time in any jurisdiction duly adjudicated a mentally incapacitated person, or a person with a substance-related disorder, or is committed to an institution or

hospital for treatment thereof, the clerk of any court in Iowa in which the adjudication or commitment is entered must, within 10 days, certify the adjudication or commitment to the supreme court clerk.

**34.17(2)** Upon the filing of an adjudication or commitment certificate or a like certificate from another jurisdiction, upon a supreme court determination pursuant to a sworn application on behalf of a local bar association, or upon a disciplinary board determination that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, the supreme court may enter an order suspending the attorney's license to practice law in this state until further order of the court. Not less than 20 days prior to the effective date of the suspension, the attorney or the attorney's guardian, and the director of the institution or hospital to which the attorney has been committed, if any, must be notified in writing, directed by restricted certified mail to the last address as shown in the records accessible to the supreme court, that the attorney has a right to appear before one or more justices of the supreme court at a specified time and place and show cause why such suspension should not take place. Upon a showing of exigent circumstances, emergency, or other compelling cause, the supreme court may reduce or waive the 20-day period and the effective date of action set forth above. Any hearing will be informal and the strict rules of evidence will not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney has been committed, if any, by restricted mail or personal service as the supreme court may direct.

**34.17(3)** Upon the voluntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.9112, or upon the involuntary retirement of an Iowa judicial officer for disability under Iowa Code section 602.2106(3)(a), the supreme court may enter an order suspending the retired judicial officer's license to practice law in this state in the event the underlying disability prevents the discharge of an attorney's professional responsibilities. The suspension is effective until further order of the supreme court. A copy of the suspension order must be given to the suspended attorney or to the attorney's guardian and to the director of the institution or hospital to which the suspended attorney is committed, if any, by restricted mail or personal service as the supreme court may direct.

**34.17(4)** Any attorney suspended pursuant to rule 34.17 must refrain, during the suspension, from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. The suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**34.17(5)** No attorney suspended due to disability under rule 34.17 may engage in the practice of law in this state until reinstated by supreme court order.

**34.17(6)**

*a.* Upon being notified of the suspension of an attorney, the chief judge in the judicial district in which the attorney practiced may appoint an attorney or attorneys to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. Any trustee appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the board and as a commissioner of the supreme court for the purposes of the appointment.

*b.* While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. Should any such information be acquired inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

*c.* The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

d. When the suspended attorney is reinstated to practice law in this state, all pending representation of clients is completed, or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

e. Trustee fees and expenses paid by the Client Security Commission must be assessed to the disabled attorney by the Client Security Commission and are due upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

**34.17(7)** Any suspended attorney is entitled to apply for reinstatement to active status once each year or at such shorter intervals as the supreme court may provide. The supreme court may reinstate an attorney suspended due to disability upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fully qualified to resume the practice of law. Upon the attorney's filing of an application for reinstatement, the supreme court may take or direct any action deemed necessary or proper to determine whether the suspended attorney's disability has been removed, including an examination of the attorney by qualified medical experts as the supreme court may designate. In its discretion the supreme court may direct that the attorney pay the expenses of the examination.

**34.17(8)** The filing of an application for reinstatement to active status by an attorney suspended due to disability constitutes a waiver of the doctor-patient privilege regarding any treatment of the attorney during the period of the disability. The attorney must also set forth in the application for reinstatement the name of every psychiatrist, psychologist, physician, hospital, or any other institution by whom or in which the attorney has been examined or treated since the disability suspension. The attorney must also furnish to the supreme court written consent that the psychiatrist, psychologist, physician, hospital, or other institution may divulge any information and records the supreme court or any court-appointed medical experts request.

**34.17(9)** When an attorney has been suspended due to disability and thereafter the attorney is judicially held to be competent or cured, the supreme court may dispense with further evidence regarding removal of the disability and may order reinstatement to active status upon such terms as the court deems reasonable.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.17 formerly appeared as Iowa Court Rule 35.17. It is amended to provide for recovery of trustee fees and costs the Client Security Commission pays through the annual assessment and reporting process and also as a condition of reinstatement. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 34.18 Death, suspension, or disbarment of practicing attorney.**

**34.18(1)** Upon a sworn application on behalf of a local bar association or the disciplinary board showing that a practicing attorney has died or has been suspended or disbarred from the practice of law and that a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced may appoint an attorney to serve as trustee to inventory the attorney's files, sequester client funds, and take any other appropriate action to protect the interests of the attorney's clients and other affected persons. The appointment is subject to supreme court confirmation. The appointed attorney serves as a special member of the disciplinary board and as a commissioner of the supreme court for the purposes of the appointment.

**34.18(2)** While acting as trustee, the trustee must not serve as an attorney for the clients of the disabled attorney or other affected persons. The trustee also must not examine any papers or acquire any information concerning real or potential conflicts with the trustee's clients. If the trustee acquires such information inadvertently, the trustee must, as to such matters, protect the privacy interests of the disabled attorney's clients by prompt recusal or refusal of employment.

**34.18(3)** The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security Commission, in the exercise of its sole discretion, must determine the merits of the claim and the amount of any payment from the fund.

**34.18(4)** When all pending representation of clients is completed or the purposes of the trust are accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

**34.18(5)** Trustee fees and expenses paid by the Client Security Commission must be assessed to the deceased, suspended, or disbarred attorney by the Client Security Commission and are due



upon assessment. Trustee fees and expenses assessed under this rule must be paid as a condition of reinstatement and may be collected by the Client Security Commission as part of the annual statement and assessment required by rule 39.8.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.18 formerly appeared as Iowa Court Rule 35.18. It is amended to provide for recovery of trustee fees and costs the Client Security Commission pays through the annual assessment and reporting process and also as a condition of reinstatement. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 34.19 Reciprocal discipline.**

**34.19(1)** Any attorney admitted to practice in this state, upon being subjected to professional disciplinary action in another jurisdiction or in any federal court, must promptly advise the disciplinary board in writing of such action. Upon being informed that an attorney admitted to practice in this state has been the subject of professional discipline in another jurisdiction or any federal court, the disciplinary board must obtain a certified copy of such disciplinary order and file it in the office of the supreme court clerk.

**34.19(2)** Upon receipt of a certified copy of an order disclosing that an attorney admitted to practice in this state has been disciplined in another jurisdiction or any federal court, the supreme court will promptly give notice of the discipline by restricted certified mail or personal service directed to the attorney containing: a copy of the disciplinary order from the other jurisdiction or federal court and an order directing that the disciplined attorney file in the supreme court, within 30 days after receipt of the notice, any objection that imposition of identical discipline in this state would be too severe or otherwise unwarranted, giving specific reasons. A like notice will be sent, by ordinary mail, to the disciplinary board, which has the right to object on the ground that the imposition of identical discipline in this state would be too lenient or otherwise unwarranted. If either party objects to imposition of identical discipline, the matter will be set for hearing before three or more justices of the supreme court, and the parties will be notified by restricted certified mail at least 10 days prior to the date set. At the hearing, a certified copy of the testimony, transcripts, exhibits, affidavits, and other matters introduced into evidence in the other jurisdiction or federal court must be admitted into evidence as well as any findings of fact, conclusions of law, decisions, and orders. Any such findings of fact are conclusive and not subject to readjudication. The supreme court may enter such findings, conclusions, and orders that it deems appropriate.

**34.19(3)** If neither party objects within 30 days from service of the notice, the supreme court may impose the identical discipline, unless the court finds that on the face of the record upon which the discipline is based it clearly appears that any of the following are true:

- a. The disciplinary procedure was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process.
- b. There was such infirmity of proof establishing misconduct as to give rise to the clear conviction that the supreme court could not, conscientiously, accept as final the conclusion on that subject.
- c. The misconduct established warrants substantially different discipline in this state.

**34.19(4)** If the supreme court determines that any such factors exist, it may enter an appropriate order. Rule 34.25 applies to any subsequent reinstatement or reduction or stay of discipline.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.19 formerly appeared as Iowa Court Rule 35.19. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.20 Suspension of attorney's license for failure to comply with a child support order.** An attorney who fails to comply with a child support order may be subject to a suspension of the attorney's license to practice law in Iowa.

**34.20(1) Procedure.** Any certificate of noncompliance with a child support order that involves an attorney must be filed by the Child Support Recovery Unit (CSRU) with the office of professional regulation at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation of the supreme court must issue a notice to the attorney. The following rules apply and must be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the CSRU to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the county in which the underlying child support order is filed.

c. The attorney must file the application for hearing with the district court clerk within 30 days of the date of issuance of the notice and must provide copies of the application to the CSRU and the office of professional regulation by regular mail.

d. Filing of the application automatically stays the supreme court's action on the certificate of noncompliance.

e. The provisions of this rule prevail over those of any other statute or rule to the extent they may conflict.

**34.20(2) District court hearing.**

a. Upon receipt of an attorney's application for hearing, the district court clerk must schedule a hearing to be held within 30 days of the date of filing of the application. The district court clerk must mail copies of the order setting hearing to the attorney, the CSRU, and the office of professional regulation.

b. Prior to the hearing, the district court must receive a certified copy of the CSRU's written decision and certificate of noncompliance from the CSRU and a certified copy of the notice from the office of professional regulation.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance will be lifted.

d. The district court's scope of review is limited to determining if there has been a mistake of fact relating to the attorney's child support delinquency. The court will not consider visitation or custody issues and will not modify the child support order.

e. If the district court concludes the CSRU erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of certificate of noncompliance, the district court will order the CSRU to file a withdrawal of certificate of noncompliance with the office of professional regulation.

**34.20(3) Noncompliance certificate withdrawn.** If the CSRU files a withdrawal of certificate of noncompliance, the supreme court will curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under supreme court rules.

**34.20(4) Sharing information.** Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the director of the office of professional regulation is authorized to share information with the CSRU for the sole purpose of allowing the CSRU to identify attorneys subject to enforcement under Iowa Code chapter 252J or 598.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.20 formerly appeared as Iowa Court Rule 35.20. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.21 Suspension of attorney's license for failure to comply with an obligation owed to or collected by the College Student Aid Commission.** An attorney who defaults on an obligation owed to or collected by the College Student Aid Commission (aid commission) may be subject to suspension of the attorney's license to practice law in Iowa.

**34.21(1) Procedure.** The aid commission must file any certificate of noncompliance that involves an attorney with the office of professional regulation at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation must issue a notice to the attorney. The following rules apply and must be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the aid commission to file a withdrawal of certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney must contact the aid commission to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance.

c. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the attorney's county of residence.

d. The attorney must file the application for hearing with the district court clerk within 30 days of the date of issuance of the notice must provide copies of the application to the aid commission and the office of professional regulation by regular mail.

e. Filing of the application automatically stays the supreme court's action on the certificate of noncompliance.

f. The provisions of this rule prevail over those of any other statute or rule to the extent they may conflict.

**34.21(2) District court hearing.**

a. Upon receipt of an attorney's application for hearing, the district court clerk must schedule a hearing to be held within 30 days of the date of filing of the application. The district court clerk must mail copies of the order setting hearing to the attorney, the aid commission, and the office of professional regulation.

b. Prior to the hearing, the district court must receive a certified copy of the aid commission's written decision, a certificate of noncompliance from the commission, and a certified copy of the notice from the office of professional regulation.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance will be lifted.

d. The district court's scope of review is limited to determining if there has been a mistake of fact relating to the attorney's delinquency.

e. If the district court concludes the aid commission erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of the certificate of noncompliance, the court will order the aid commission to file a withdrawal of the certificate of noncompliance with the office of professional regulation.

**34.21(3) *Noncompliance certificate withdrawn.*** If the aid commission files a withdrawal of certificate of noncompliance, the supreme court will curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under supreme court rules.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.21 formerly appeared as Iowa Court Rule 35.21. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 34.22 Suspension of attorney's license for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.** An attorney who defaults on an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue (CCU) may be subject to suspension of the attorney's license to practice law in Iowa.

**34.22(1) *Procedure.*** The CCU must file any certificate of noncompliance that involves an attorney with the office of professional regulation at 1111 E. Court Ave., Des Moines, Iowa 50319. Upon receipt of the certificate of noncompliance, the director of the office of professional regulation must issue a notice to the attorney. The following rules apply and must be recited in the notice:

a. The attorney's license to practice law will be suspended unless the attorney causes the CCU to file a withdrawal of the certificate of noncompliance within 30 days of the date of issuance of the notice.

b. The attorney must contact the CCU to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance.

c. The attorney may challenge the supreme court's action under this rule only by filing an application for hearing with the district court in the county where the majority of the liability was incurred.

d. The attorney must file the application for hearing with the clerk of the district court within 30 days of the date of issuance of the notice and must provide copies of the application to the CCU and the office of professional regulation by regular mail.

e. Filing of the application automatically stays the supreme court's action on the certificate of noncompliance.

f. The provisions of this rule prevail over those of any other statute or rule to the extent they may conflict.

**34.22(2) *District court hearing.***

a. Upon receipt of an attorney's application for hearing, the district court clerk must schedule a hearing to be held within 30 days of the date of filing of the application. The district court clerk must mail copies of the order setting hearing to the attorney, the CCU, and the office of professional regulation.

b. Prior to the hearing, the district court must receive a certified copy of the CCU's written decision and certificate of noncompliance from the CCU and a certified copy of the notice from the office of professional regulation.

c. If the attorney fails to appear at the scheduled hearing, the automatic stay of the supreme court's action on the certificate of noncompliance will be lifted.

d. The district court's scope of review is limited to demonstration of the amount of the liability owed or the identity of the person.

e. If the district court concludes the CCU erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of the certificate of noncompliance, the court will order the CCU to file a withdrawal of the certificate of noncompliance with the office of professional regulation.

**34.22(3) *Noncompliance certificate withdrawn.*** If a withdrawal of the certificate of noncompliance is filed, the supreme court will curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under supreme court rules.

**34.22(4) *Sharing information.*** Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the director of the office of professional regulation is authorized to share information with the CCU for the sole purpose of allowing the CCU to identify attorneys subject to enforcement under Iowa Code chapter 272D.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.22 formerly appeared as Iowa Court Rule 35.22. [Court Order January 26, 2016, effective April 1, 2016]

### **Rule 34.23 Suspension generally.**

**34.23(1)** In the event the supreme court suspends an attorney's license to practice law, the suspension continues for the minimum time specified in such order and until the supreme court approves the attorney's written application for reinstatement. In the order of suspension or by order at any time before reinstatement, the supreme court may require the suspended attorney to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

**34.23(2)** An attorney whose license has been suspended for a period not exceeding 60 days is not required to file an application for reinstatement, and the court will order reinstatement of the attorney's license on the day after the suspension period expires, subject to the following exceptions:

a. The disciplinary board may file and serve within the suspension period an objection to the automatic reinstatement of the attorney. The filing of an objection stays the automatic reinstatement until the supreme court orders otherwise. If the disciplinary board files an objection, the supreme court will set the matter for hearing and the supreme court clerk must enter written notice in conformance with rule 34.25, except that the court may waive the requirement of a 60-day waiting period prior to the hearing date.

b. Automatic reinstatement will not be ordered until all costs assessed under rule 36.24 are paid and the reporting and fee payment requirements of rules 39.14(2) and 41.10(2) are completed.

**34.23(3)** Any attorney suspended must refrain during such suspension from all facets of ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; acting as a fiduciary; and when possible, remove all advertising of the attorney's services or holding out to the public that he or she is a licensed attorney. Such suspended attorney may, however, act as a fiduciary for an estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**34.23(4)** Nothing in this rule precludes an attorney, law firm, or professional association from employing a suspended attorney to perform only such services as laypersons may ethically perform under all of the following conditions:

a. Notice of employment, together with a full job description, must be provided by the employer and employee to the disciplinary board before employment commences.

b. The employer and employee must verify and submit informational reports quarterly to the disciplinary board certifying that no aspect of the employee's work has involved the unauthorized practice of law.

c. A suspended attorney must not have direct or personal association with any client and must not disburse or otherwise handle funds or property of a client.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.23 formerly appeared as Iowa Court Rule 35.13. Rule 34.23(2) is amended from former rule 35.13(2) to make clear that satisfaction of reinstatement requirements with the Commission on Continuing Legal Education and the Client Security Commission is a condition precedent to automatic reinstatement, as it is for reinstatement upon application. The rule also is amended to require curtailment of advertising, to the extent possible, during the period of suspension. [Court Order January 26, 2016, effective April 1, 2016]

### **Rule 34.24 Notification of clients and counsel.**

**34.24(1)** In every case in which a respondent is ordered to be disbarred or suspended, the respondent must do all of the following:

a. Within 15 days notify in writing the respondent's clients in all pending matters of the need to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney.

b. Within 15 days deliver to all clients represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place for obtaining the papers and other property, calling attention to any urgency for obtaining the papers or other property.

c. Within 30 days refund any part of any fees paid in advance that have not been earned.

d. Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties of the respondent's disbarment or suspension and consequent disqualification to act as an attorney after the effective date of such discipline or transfer to disability inactive status.

e. Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

f. Keep and maintain records of the steps taken to accomplish the foregoing.

g. Within 30 days file with the disciplinary board copies of the notices sent pursuant to the requirements of this rule and proof of complete performance of the requirements. This is a condition for application for readmission to practice.

**34.24(2)** The times set forth in rules 34.24(1)(c) and 34.24(1)(g) are reduced to 15 days for respondents who are exempted from filing an application for reinstatement under rule 34.23.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.24 formerly appeared as Iowa Court Rule 35.23. [Court Order January 26, 2016, effective April 1, 2016]

## REINSTATEMENT

**Rule 34.25 Procedure on application for reinstatement.** Any person whose certificate to practice law in this state has been suspended may apply for reinstatement subject to the following rules:

**34.25(1) Application.**

a. A proceeding for reinstatement to the practice of law in Iowa must be commenced by written application to the supreme court filed with the supreme court clerk not more than 60 days prior to expiration of the suspension period.

b. The application must state the date of the applicant's original admission, the date and duration of suspension, and that the applicant has complied in all respects with any orders or judgments of the supreme court relating to the suspension.

c. The application must be verified by the oath of the applicant as to the truth of the statements made in the application.

d. The applicant must also submit to the supreme court satisfactory proof that the applicant, at the time of the application, is of good moral character and in all respects worthy of the right to practice law. The application must be accompanied by the recommendation of at least three reputable attorneys currently practicing law in the judicial district in which the applicant then lives and has lived at least one year prior to filing the application. If the applicant does not reside in the district in which the applicant lived at the time of the suspension, the applicant must also file a recommendation from three reputable attorneys currently practicing law in the district where the applicant resided at the time of suspension. The required recommendations may not be from judges or magistrates.

e. The applicant must also submit satisfactory proof that the applicant, at the time of the application, has filed all reports, paid all fees, and completed all continuing legal education requirements of chapters 39, 41, and 42 of the Iowa Court Rules.

f. The applicant must submit satisfactory proof that the Client Security Trust Fund is repaid in full for all client security conduct or that the Client Security Commission has approved a repayment plan.

**34.25(2) Procedure.** Upon filing of the application and recommendations with the supreme court clerk, the clerk must give written notice containing the date of the suspension, the date of filing the application, and the date of the hearing set by the supreme court, which will be at least 60 days after the filing of such application for reinstatement, to the persons listed below:

a. The attorney general.

b. The county attorney where the applicant resides.

c. The county attorney where the applicant resided at the time of suspension.

d. The chair of the Iowa Board of Law Examiners.

e. The assistant director for attorney discipline of the office of professional regulation.

f. Each judge of the district in which the applicant resided at the time of suspension.

- g. The president of a local bar association where the applicant resides.
- h. The president of a local bar association where the applicant resided when the certificate was suspended.
- i. The president of The Iowa State Bar Association.

**34.25(3) *Written statements.*** After receipt of the notice and before the date fixed for hearing, the persons provided notice in rule 34.25(2) may submit to the supreme court clerk written statements of fact and comments regarding the current fitness of the applicant to practice law.

**34.25(4) *Notices of witnesses and exhibits.*** At least 14 days prior to the scheduled hearing date, the applicant and the disciplinary board must provide notice to the court and the opposing party of the names and expected testimony of any witnesses they intend to produce and must file and serve copies of any exhibits they intend to introduce at the hearing. The opposing party must provide notice of any rebuttal witnesses or exhibits no later than 7 days prior to the scheduled hearing date. The supreme court may waive these deadlines only upon good cause shown.

**34.25(5) *Hearing.*** The reinstatement hearing will be held at the time and place the supreme court designates. The applicant bears the burden of demonstrating that the applicant is of good moral character, is fit to practice law, and has complied in all respects with the terms of the order or judgment of suspension. The hearing will be public unless the supreme court orders otherwise upon motion of a party. The hearing will be informal and the strict rules of evidence will not apply. The supreme court may impose reasonable time limits on the length of the hearing.

**34.25(6) *Decision.*** The supreme court will render its decision as soon as practicable after the hearing. The supreme court may require the applicant to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

**34.25(7) *Reinstatement after revocation.*** In the event the supreme court revokes an attorney's license to practice law, the attorney is not eligible to apply for reinstatement until at least five years after the date of revocation. For purposes of rule 34.25, "revoked attorney" includes an attorney whose license to practice law has been revoked or an attorney who has been disbarred. Similarly, "revocation" includes "disbarment" and "revoked" includes "disbarred."

**34.25(8) *Pre-filing requirements.*** Prior to filing the application, the revoked attorney must:

- a. File the attorney's character and fitness application with the National Conference of Bar Examiners (NCBE) and pay the NCBE's application fee.
- b. Pay an administrative fee of \$525 to the Iowa Board of Law Examiners.

**34.25(9) *Filing and contents of application.*** A revoked attorney's application for reinstatement must:

- a. Be filed with the supreme court clerk and be served on the Iowa Board of Law Examiners.
- b. State the date of the applicant's original admission, the date of revocation, and that the applicant has complied in all respects with rule 34.24 and any supreme court orders or judgments relating to the revocation.
- c. Include satisfactory proof that the applicant is of good moral character and is in all respects worthy of readmission to the bar. The applicant must provide a detailed affidavit describing the applicant's personal, educational, and work history since the date of revocation. The application must be accompanied by the recommendation of at least three reputable attorneys currently practicing law in the judicial district in which the applicant then lives and has lived at least one year prior to filing the application. If the applicant does not reside in the district in which the applicant lived at the time of the revocation, the applicant must also file a recommendation from three reputable attorneys currently practicing law in the district where the applicant resided at the time of revocation. The required recommendations may not be from judges or magistrates.
- d. Include satisfactory proof that the applicant, at the time of the application, has paid all fees required by the provisions of chapters 39, 41, and 42 of the Iowa Court Rules.
- e. Include satisfactory proof that the Client Security Trust Fund has been repaid in full, or that the Client Security Commission has approved a repayment plan, for all client security claim payments paid from the Client Security Trust Fund under rule 39.9 based on the applicant's conduct.
- f. Include satisfactory proof that the applicant, at the time of the application, has paid all costs assessed against the applicant under rule 36.24.

**34.25(10) *Iowa Board of Law Examiners' report.*** After the application for reinstatement is filed with the supreme court clerk, the disciplinary board will file a report and recommendation with the supreme court regarding the applicant's character and fitness.

**34.25(11) *Supreme court actions on application.*** Upon review of the application for reinstatement from a revoked attorney, the supreme court may summarily deny the application, request further information, or set a hearing date and direct the supreme court clerk to give the notice provided under rule 34.25(12). The court may appoint a special master or a hearing panel to conduct the hearing. The hearing date must in no case be less than 60 days after the filing of the application for reinstatement. Any order denying reinstatement may state whether the attorney is allowed to file a future application and, if so, the minimum amount of time before the application may be filed.

**34.25(12) *Procedure.*** Upon direction of the supreme court, the supreme court clerk must give written notice of the revoked attorney's application for reinstatement containing the date of the revocation, the date of filing the application, and the date of the hearing set by the court, if any, to the following persons:

- a. The attorney general.
- b. The county attorney where the applicant resides.
- c. The county attorney where the applicant resided at the time of revocation.
- d. The chair of the Iowa Board of Law Examiners.
- e. The assistant director for attorney discipline of the office of professional regulation.
- f. Each judge of the district in which the applicant resided at the time of revocation.
- g. The president of a local bar association where the applicant resides.
- h. The president of a local bar association where the applicant resided at the time of revocation.
- i. The president of The Iowa State Bar Association.

**34.25(13) *Written statements.*** Such persons, after receipt of the notice and before the date fixed for hearing, may submit to the supreme court clerk written statements of fact and comments regarding the applicant's current fitness to practice law.

**34.25(14) *Notices of witnesses and exhibits.*** At least 14 days prior to the scheduled hearing date, the applicant and the disciplinary board must provide the supreme court or the special master or hearing panel, if applicable, and the opposing party notice of the names and expected testimony of any witnesses they intend to produce, and they must file and serve copies of any exhibits they intend to introduce at the hearing. The parties may provide notice of any rebuttal witnesses or exhibits no later than 7 days prior to the scheduled hearing date. The court, or the special master or hearing panel, if applicable, may waive these deadlines only upon good cause shown.

**34.25(15) *Hearing.*** The reinstatement hearing will be held at the time and place the supreme court designates. The applicant bears the burden of demonstrating that the applicant is of good moral character, is fit to practice law, and has complied in all respects with the terms of the order or judgment of revocation. The hearing will be public unless the supreme court orders otherwise upon motion of a party. The hearing will be informal, and strict rules of evidence will not apply. The supreme court may impose reasonable time limits on the length of the hearing. The hearing must be recorded.

**34.25(16) *Decision.***

a. The supreme court's decision will be determined by majority vote of those justices participating in the proceeding. Any special master or hearing panel appointed to conduct a hearing must file a report containing findings of fact with the supreme court clerk within 30 days after the hearing. The court's review of the record made before the special master or hearing panel will be de novo. An attorney's readmission to practice in another jurisdiction following revocation in Iowa is not binding on the decision of the supreme court on any application for reinstatement to practice in Iowa. The decision rests in the sole discretion of the supreme court.

b. The supreme court in its discretion may place conditions on reinstatement, including, but not limited to, passing the Iowa Bar Examination. If the supreme court does not require the applicant to pass the bar examination, it will impose a requirement that the applicant must report up to 100 hours of continuing legal education. If the applicant refuses or fails to perform any of the conditions, the court may enter an order summarily denying the application or revoking the attorney's license, if admitted, without further hearing. The applicant must post a scaled score of at least 80 on the Multistate Professional Responsibility Exam (MPRE) as a condition of reinstatement. The MPRE score may be from a test taken no longer than three years prior to the date of filing of the application for reinstatement. An applicant may take the MPRE after the court's reinstatement decision, but the attorney will not be reinstated until the required score is filed.

**34.25(17) *Applicability of rules to attorneys permanently enjoined from practicing law in Iowa.*** Rules 34.25(7) through 34.25(16) also apply to attorneys not licensed in Iowa whom the Iowa Supreme Court has enjoined from practicing law in Iowa on a permanent basis. Such attorneys who

seek to have the injunction lifted must follow the procedures set forth for revoked attorneys in those rules, and their applications will be processed in the same manner.

**34.25(18) *Denial of reinstatement for failure to comply with a child support order.*** An attorney who fails to comply with a child support order may be denied reinstatement of the attorney's license to practice law in Iowa.

*a. Procedure.* The Child Support Recovery Unit (CSRU) may file with the supreme court clerk any certificate of noncompliance that involves an attorney. Rule 34.20(1) governs the procedure, including notice to the attorney, except that the notice must refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an attorney's application for hearing, the district court clerk must schedule a hearing to be held within 30 days of the date of filing of the application. Rule 34.20(2) governs all matters pertaining to the hearing.

*c. Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court will curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

*d. Sharing information.* Notwithstanding the provisions of any other rule or statute concerning the confidentiality of records, the supreme court clerk and the director of the office of professional regulation are authorized to share information with the CSRU for the sole purpose of allowing the CSRU to identify licensees subject to enforcement under Iowa Code chapter 252J or 598.

**34.25(19) *Denial of reinstatement for default on student loan obligation.*** An attorney who defaults on an obligation owed to or collected by the aid commission may be denied reinstatement of the attorney's license to practice law in Iowa.

*a. Procedure.* The College Student Aid Commission may file with the supreme court clerk any certificate of noncompliance that involves an attorney. Rule 34.21(1) governs the procedure, including notice to the attorney, except that the notice must refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an attorney's application for hearing, the district court clerk must schedule a hearing to be held within 30 days of the date of filing of the application. Rule 34.21(2) governs all matters pertaining to the hearing.

*c. Noncompliance certificate withdrawn.* If a withdrawal of certificate of noncompliance is filed, the supreme court will curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

**34.25(20) *Denial of reinstatement for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.*** An attorney who defaults on an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue (CCU) may be denied reinstatement of the attorney's license to practice law in Iowa.

*a. Procedure.* The CCU may file with the supreme court clerk any certificate of noncompliance that involves an attorney. Rule 34.22(1) governs the procedure, including notice to the attorney, except that the notice must refer to a refusal to reinstate an attorney's license to practice law instead of a suspension of the attorney's license.

*b. District court hearing.* Upon receipt of an attorney's application for hearing, the district court clerk must schedule a hearing to be held within 30 days of the date of filing of the application. Rule 34.22(2) governs all matters pertaining to the hearing.

*c. Noncompliance certificate withdrawn.* If a withdrawal of a certificate of noncompliance is filed, the supreme court will curtail any proceedings pursuant to the certificate of noncompliance or, if necessary, will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible for reinstatement.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 34.25 formerly appeared as Iowa Court Rule 35.14. [Court Order January 26, 2016, effective April 1, 2016]



**CHAPTER 35**  
**IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD**  
**RULES OF PROCEDURE**

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## CHAPTER 35

### IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD RULES OF PROCEDURE

**Rule 35.1 Complaints.** Complaints alleging that an attorney has committed a disciplinary infraction must be accepted from any person, firm, or other entity. The Iowa Supreme Court Attorney Disciplinary Board (disciplinary board) may, upon its own motion, initiate any investigation or disciplinary action.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.1 substantially appeared as former Iowa Court Rule 34.1. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.2 Form of complaint.** Complaint forms, found in rule 35.15, must be available to the public from the disciplinary board. Complaints must be certified under penalty of perjury, except when filed by an officer of the court, and may include whatever exhibits the complainant desires to submit.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.2 formerly appeared as Iowa Court Rule 34.2. It is amended to conform an internal reference to the new rule numbers, and to reflect actual practice with respect to dissemination of complaint forms. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.3 Filing.** Complaints must be filed, without charge, with the disciplinary board.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.3 formerly appeared as Iowa Court Rule 34.3. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.4 Procedure upon receipt of complaint.**

**35.4(1)** Upon receiving a complaint, the assistant director for attorney discipline must evaluate all information coming to his or her attention from the complaint or from any other sources alleging attorney misconduct or incapacity. The assistant director is authorized to decline to open an investigation of a complaint if the information, if true, would not constitute misconduct or incapacity or if the complaint is facially frivolous, stale, lacking in adequate factual detail, duplicative; or is outside the disciplinary board's jurisdiction; or does not otherwise reasonably warrant investigation. The disciplinary board may adopt policies to guide the assistant director in the exercise of this authority.

**35.4(2)** The disciplinary board must make a record indicating the date the complaint was filed, the name and address of the complainant, the name and address of the respondent, and a brief statement of the charges made. This record ultimately must show the final disposition of the matter when it is completed.

**35.4(3)** The disciplinary board must keep all files confidential, unless the board chair or the chair's designee otherwise provides or directs in writing for disciplinary purposes or pursuant to a specific supreme court rule. All files must be available for examination and reproduction by the designated officer or agent of the Client Security Commission, pursuant to proceedings under chapter 39 of the Iowa Court Rules.

**35.4(4)** Any such files, except for the work product of staff counsel, investigators, or assistant directors of the disciplinary board, must be provided to the respondent within a reasonable time upon the respondent's request. For purposes of this rule, "work product" does not include a written statement signed or otherwise adopted or approved by the person making it or a contemporaneous and substantially verbatim transcript or recording of a person's oral statement.

**35.4(5)** A complaint declined pursuant to this rule may not be deemed a complaint for any purpose. A complaint declined pursuant to this rule will not be docketed under rule 35.4(2), and the disciplinary board or the respondent must not report or disclose the complaint to any person or authority for any reason.

**35.4(6)** A true copy of any complaint against a member of the grievance commission or the disciplinary board involving alleged violations of an attorney's oath of office or of the Iowa Rules of Professional Conduct or laws of the United States or State of Iowa must be promptly forwarded to the Chief Justice of the Iowa Supreme Court.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rules 35.4(1) through 35.4(5) formerly appeared at Iowa Court Rule 34.4. Rule 35.4(6) formerly appeared as Iowa Court Rule 35.24(3). Rule 35.4 is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.5 Notification of complainant.** Upon receipt of any complaint, the disciplinary board must notify the complainant in writing that the board has received the complaint and will act upon it or that pursuant to rule 35.4(1) the board will take no action on the complaint.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.5 formerly appeared as Iowa Court Rule 34.5. It is amended to conform an internal rule reference to the new rule numbers, and the rule title is changed to more accurately describe this step in disciplinary board procedure. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.6 Notification of respondent; response.**

**35.6(1)** The disciplinary board must forward to the respondent a copy of the complaint and copies of chapters 35 and 36 of the Iowa Court Rules. However, if the complaint is declined pursuant to rule 35.4(1), the disciplinary board need not notify the respondent and no response is required.

**35.6(2)** The disciplinary board may forward the complaint to the respondent by restricted certified mail, marked “Confidential,” to the respondent’s last address as shown by records accessible to the supreme court, or the board may serve the complaint by personal service in the manner of an original notice in civil suits.

**35.6(3)** If service cannot be obtained pursuant to rule 35.6(2), the disciplinary board may serve the complaint on the supreme court clerk, who is appointed to receive service on behalf of attorneys subject to Iowa’s disciplinary authority. Iowa R. Prof’l Conduct 32:8.5 cmt. [1]. Service upon the supreme court clerk is deemed to be receipt of the complaint by the respondent. Simultaneously with serving a complaint on the supreme court clerk, the disciplinary board must forward the complaint to the respondent by restricted certified mail, marked “Confidential,” to the respondent’s last address as shown by records accessible to the supreme court, and the board must file with the supreme court clerk an affidavit attesting that it has done so.

**35.6(4)** The respondent must provide a written response within 20 days of receipt of the complaint. [Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.6 formerly appeared as Iowa Court Rule 34.6. It is amended to conform internal references to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.7 Failure to respond; notice; effect.**

**35.7(1) *Failure to respond—separate ethical violation.*** If after 20 days no response has been received, the respondent must be notified by restricted certified mail that unless a response is made within 10 days from receipt of notice, the disciplinary board may file a complaint with the Grievance Commission of the Supreme Court of Iowa (grievance commission) for failure to respond and concerning all or any portion of the matter about which the original complaint was made. If service cannot be obtained by restricted certified mail, the disciplinary board may serve the notice on the supreme court clerk, who is appointed to receive service on behalf of attorneys subject to Iowa’s disciplinary authority. Iowa R. of Prof’l Conduct 32:8.5 cmt. [1]. Service upon the supreme court clerk is deemed to be receipt of the notice by the respondent.

**35.7(2) *Enlargement of time to respond.*** The disciplinary board may grant an enlargement of time to respond under rule 35.6 or 35.7(1) for good cause shown.

**35.7(3) *Failure to respond—temporary suspension.*** If a response is not provided within 10 days of receipt of the notice issued pursuant to rule 35.7(1) or within the time allowed under rule 35.7(2), the disciplinary board must certify the respondent’s failure to respond to the supreme court clerk.

a. Upon receipt of the disciplinary board’s certificate, the supreme court clerk must issue a notice to the attorney that the attorney’s license to practice law will be temporarily suspended unless the attorney causes the board to file a withdrawal of the certificate within 20 days of the date of issuance of the clerk’s notice.

b. If the attorney responds to the complaint within the 20-day period, the disciplinary board must immediately withdraw the certificate and no suspension will occur.

c. If the disciplinary board has not withdrawn the certificate and the 20-day notice period expires, the court will enter an order temporarily suspending the attorney’s license to practice law in the State of Iowa.

d. If the attorney responds to the complaint after a temporary suspension order is entered, the disciplinary board must, within five days of receiving the response, either withdraw the certificate or file with the supreme court a report indicating that the attorney has responded but stating cause why the attorney’s license should not be reinstated and the suspension should be continued under the provisions of Iowa Court Rule 34.14, 34.15, or 34.16.

*e.* If the disciplinary board seeks to continue the suspension under the provisions of Iowa Court Rule 34.14, 34.15, or 34.16, the supreme court will either reinstate the attorney or enter an appropriate order under the applicable rule.

*f.* If the disciplinary board files a withdrawal of the certificate after temporary suspension of the attorney's license, the supreme court will immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under the rules of the court.

*g.* During the initial 30 days of a temporary suspension under this rule, the attorney must give the notice Iowa Court Rule 34.24 requires to those clients whose interests may be adversely affected by the attorney's suspension.

*h.* When the suspension period under this rule exceeds 30 days, the attorney must comply with the requirements of Iowa Court Rule 34.24 as to all clients.

*i.* An attorney whose license is suspended under the provisions of rule 35.7(3)(c) must pay a fee of \$100 as a condition precedent to reinstatement.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.7 formerly appeared as Iowa Court Rule 34.7. It is amended to conform internal references to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

### **Rule 35.8 Disciplinary board actions upon receipt of response.**

**35.8(1)** Upon receipt of a response, the disciplinary board must do one of the following:

- a.* Dismiss the complaint and notify the complainant and the respondent of the dismissal in writing.
- b.* Cause the case to be docketed for disciplinary board consideration at its next hearing-meeting.
- c.* Arrange for either the disciplinary board's counsel or a local bar association to investigate the complaint as the board chair or the chair's designee deems appropriate.

(1) All investigations done by a person or entity other than the disciplinary board's counsel or its in-house staff must be done in a manner as directed by and under the supervision of the board.

(2) The results of the investigation must be forwarded to the disciplinary board with any recommendation for the board's final action.

**35.8(2)** The disciplinary board has subpoena power during any investigation conducted on its behalf to compel the appearance of witnesses or the production of documents before the person designated to conduct the investigation on behalf of the board.

**35.8(3)** The disciplinary board chair, or other board member in the absence of the chair, has authority to issue subpoenas.

**35.8(4)** The district court for the county in which the investigation is being conducted has jurisdiction over any objection or motion relating to a subpoena, and it has authority to punish disobedience of a subpoena in a contempt proceeding.

**35.8(5)** The board's counsel or any other person authorized to administer oaths has authority to administer an oath or affirmation to a witness.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.8 formerly appeared as Iowa Court Rule 34.8. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.9 Disciplinary board action upon report and recommendation of investigator.** When the report and recommendation of the investigator is returned to the disciplinary board, the board must do one of the following:

**35.9(1)** Dismiss the complaint and notify the complainant and the respondent of the dismissal.

**35.9(2)** Cause the case to be docketed for consideration at its next hearing-meeting.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.9 formerly appeared as Iowa Court Rule 34.9. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.10 Prior notice of witnesses.** If any witness or party is required to give testimony before the disciplinary board, the witness or party must be given at least seven days' written notice in advance of the hearing-meeting at which the witness or party is required to attend and testify.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.10 formerly appeared as Iowa Court Rule 34.10. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.11 Hearing-meetings.** The disciplinary board must hold hearing-meetings at least quarterly and may hold them telephonically. A majority of the disciplinary board constitutes a quorum. The chair, or the chair's designee, must see to the preparation of a record of hearing-meetings, which becomes a part of the permanent files of the supreme court. Any evidence must be taken under oath

or affirmation and may be made of record. Upon completion of the consideration of any matter before the disciplinary board, the members, by majority vote of those present, must do one of the following:

**35.11(1)** Continue the matter.

**35.11(2)** Dismiss the complaint and notify the complainant and the respondent of the dismissal.

**35.11(3)** Admonish the respondent, who must be notified in writing that the respondent has 30 days from the date of mailing to file an exception with the assistant director for attorney discipline, who must then refer the admonition to the disciplinary board. The disciplinary board may dismiss, admonish, reprimand, or file a formal complaint with the grievance commission. In cases of admonition, the disciplinary board must notify the complainant of the board's opinion concerning the matter and its communication with the attorney involved.

**35.11(4)** Reprimand the respondent and file the reprimand as provided in Iowa Court Rule 35.12.

**35.11(5)** File a complaint before the grievance commission and prosecute the complaint to final determination.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.11 formerly appeared as Iowa Court Rule 34.11. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.12 Reprimand.** If the disciplinary board reprimands an attorney, a copy of the reprimand must be filed with the grievance commission clerk, who must cause a copy of the reprimand to be served on the attorney by personal service in the manner of an original notice in civil suits or by restricted certified mail with a notice attached stating that the attorney has 30 days from the date of completed service to file an exception to the reprimand with the grievance commission clerk. Service is complete on the date of personal service or the date shown by the postal receipt of delivery of the notice to the attorney.

**35.12(1)** If the attorney fails to file an exception to the reprimand, the failure constitutes a waiver of any further proceedings and a consent that the reprimand be made final and public. In that event, the grievance commission clerk must cause a copy of the reprimand to be forwarded to the supreme court clerk, together with proof of service of the reprimand upon the attorney and a statement that the attorney did not file an exception within the time prescribed. The supreme court will then include the reprimand in the records of the court as a public document unless the court remands the matter to the disciplinary board for consideration of another disposition.

**35.12(2)** In the event the attorney files a timely exception to the reprimand, no report of the reprimand will be made to the supreme court clerk and the reprimand must be stricken from the records.

**35.12(3)** The board may proceed further by filing a complaint against the attorney before the grievance commission. When an exception to a reprimand is filed, the reprimand is not admissible in evidence in any hearing before the grievance commission.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.12 formerly appeared as Iowa Court Rule 35.3. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 35.13 Order for mental or physical examination or treatment.**

**35.13(1)** *Order requiring examination or treatment.* An attorney who is licensed to practice law in the State of Iowa is, as a condition of licensure, under a duty to submit to a mental or physical examination or subsequent treatment as the disciplinary board may order. The disciplinary board may order the examination or treatment based upon a showing of probable cause to believe the attorney is suffering from a condition that impairs the attorney's ability to discharge professional duties. The disciplinary board may order that the examination or treatment be at the attorney's expense.

**35.13(2)** *Show cause hearing.* Before the disciplinary board may order an attorney to submit to examination or treatment, it must schedule a hearing to permit the attorney to show cause why the board should not enter the order. At least three members of the disciplinary board must participate in the hearing. At the hearing, the disciplinary board's staff counsel must first present evidence of probable cause supporting the need for examination or treatment. The attorney may then respond to the staff counsel's showing and rebut the claim that the examination or treatment is necessary. The hearing will be informal and the strict rules of evidence will not apply. Following the hearing, the disciplinary board, by majority vote, must either dismiss the matter or enter an order requiring examination or treatment.

**35.13(3)** *Content of order.* The disciplinary board's order for mental or physical examination or treatment must include the following:

- a. A description of the type of examination or treatment to which the attorney must submit.
- b. The name and address of the examiner or treatment facility that the disciplinary board has identified to perform the examination or provide the treatment.
- c. The time period in which the attorney must schedule the examination or enter treatment.
- d. The amount of time in which the attorney is required to complete the examination or treatment.
- e. A requirement that the attorney provide a report or reports of the examination or treatment results to the disciplinary board within a specified period of time.
- f. A requirement that the attorney communicate with the disciplinary board regarding the status of the examination or treatment.

g. A provision allowing the attorney to request additional time to schedule the examination or complete the treatment or to request that the disciplinary board approve an alternative examiner or treatment facility. The disciplinary board has sole discretion to determine whether to grant the request.

**35.13(4) Review.** An attorney who disagrees with the disciplinary board's order may seek review from the supreme court by filing nine copies of a petition for review with the supreme court clerk and serving one copy of the petition on the disciplinary board within seven days after receipt of the board's order. The disciplinary board may file nine copies of a response to the petition with the supreme court clerk and serve one copy of the response on the attorney within seven days after service of the petition. The matter will be promptly set for hearing before one or more justices of the supreme court. The disciplinary board's order is stayed upon the filing of the petition for review.

**35.13(5) Hearing.** At the hearing on the petition, the disciplinary board must present evidence of probable cause supporting its order and the necessity for the examination or treatment. The attorney may then respond to the disciplinary board's showing and rebut the board's claim that the examination or treatment is necessary. The hearing will be informal and the strict rules of evidence will not apply. Following the hearing, the supreme court may affirm, vacate, or modify the disciplinary board's order or may enter such order as the circumstances warrant.

**35.13(6) Failure to submit.** An attorney's failure to submit to the examination or treatment the disciplinary board orders under this rule may be grounds for discipline through the normal disciplinary process.

**35.13(7) "Condition."** For purposes of this rule, "condition" means any physiological, mental or psychological condition, impairment, or disorder, including drug or alcohol addiction or abuse.

**35.13(8) Confidentiality.** All records, papers, proceedings, meetings, and hearings filed or conducted under this rule are confidential unless the supreme court orders otherwise.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.13 formerly appeared as Iowa Court Rule 34.12. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 35.14 Deferral of further proceedings.**

**35.14(1) Deferral.** With agreement of the assistant director for attorney discipline and the attorney, the board may defer further proceedings pending the attorney's compliance with conditions the board imposes for supervision of the attorney for a specified period of time not to exceed one year unless the board extends the time prior to the conclusion of the specified period. Proceedings may not be deferred under any of the following circumstances:

- a. The conduct under investigation involves misappropriation of funds or property of a client or a third party.
- b. The conduct under investigation involves a criminal act that reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney in other respects.
- c. The conduct under investigation resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution is made a condition of deferral.
- d. The attorney has previously been disciplined or has been placed under supervision as provided in this rule.
- e. The attorney has failed to respond to the disciplinary board's notices of complaint concerning the conduct under investigation.

**35.14(2) Conditions.** In imposing conditions, the disciplinary board must consider the nature and circumstances of the conduct under investigation and the history, character, and condition of the attorney. The conditions the disciplinary board may impose include, but are not limited to, the following:

- a. Periodic reports to the diversion coordinator and the assistant director for attorney discipline.
- b. Supervision of the attorney's practice or accounting procedures.

- c. Satisfactory completion of a course of study.
- d. Successful completion of the Multistate Professional Responsibility Examination.
- e. Compliance with the provisions of the Iowa Rules of Professional Conduct.
- f. Restitution.
- g. Psychological counseling or treatment.
- h. Substance-related disorder counseling or treatment.
- i. Abstinence from alcohol or drugs.
- j. Cooperation with the Iowa Lawyers Assistance Program.
- k. Fee arbitration.

**35.14(3) *Affidavit.*** Prior to the disciplinary board's deferral of further proceedings, the attorney must execute an affidavit setting forth all of the following:

- a. The attorney's admission of the conduct under the disciplinary board's investigation.
- b. The conditions the disciplinary board will impose for supervision of the attorney, including the period of supervision.
- c. The attorney's agreement to the conditions to be imposed.
- d. An acknowledgement that the attorney understands that if the attorney fails to comply with the conditions the disciplinary board has imposed, a formal complaint may be filed with the grievance commission, both for the matters raised in the original complaint to the board and for the attorney's failure to comply with the conditions of supervision.
- e. A statement that, if the attorney fails to comply with the conditions of supervision, the attorney's admissions with respect to the attorney's conduct may be introduced as evidence in any subsequent proceedings before the grievance commission.
- f. An acknowledgement that the attorney joins in the disciplinary board's deferral determination freely and voluntarily and understands the nature and consequences of the board's action.

**35.14(4) *Supervision.*** The diversion coordinator is responsible for supervising the attorney's compliance with the conditions the disciplinary board imposes. Where appropriate, the diversion coordinator may recommend to the disciplinary board modifications of the conditions and must report to the board the attorney's failure to comply with the conditions or to cooperate with the diversion coordinator.

**35.14(5) *Compliance.*** Upon the attorney's successful compliance with the conditions the disciplinary board imposed, the board must dismiss or close the investigations pending before it at the time it determined to defer further proceedings. The attorney will not be considered to have been disciplined, but the attorney's admission of misconduct may be considered in imposing sanctions in a subsequent disciplinary matter not arising out of the same conduct.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 35.14 formerly appeared as Iowa Court Rule 34.13. [Court Order January 26, 2016, effective April 1, 2016]



**Rule 35.15 Forms.****Rule 35.15 — Form 1: Iowa Supreme Court Attorney Disciplinary Board Complaint Form.**


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**Iowa Supreme Court Attorney Disciplinary Board  
Complaint Form**

*Complete a separate form for each attorney with whom you have a complaint.*

1. 

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*Your name*
*Email address*

---

*Street address*
*City*
*State*
*ZIP code*

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*( )*
*( )*
*( )*

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*Home phone*
*Cell phone*
*Business phone*
2. Name of attorney about whom you are complaining: 

---

*Name*

---

*Business address*
*City*
*State*
*ZIP code*

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*( )*

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*Business phone*
3. Did you hire the attorney? *Check one* ☐ Yes ☐ No  
 If yes, when did you hire the attorney? 

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 If no, what is your connection to the attorney? 

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4. If your complaint is about a lawsuit or court case, answer the following:
  - A. Name of court: 

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*Examples: Iowa District Court for Polk County; United States District Court for Northern District of Iowa*
  - B. Case title: 

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*Examples: Smith vs. Jones; State vs. Doe*
  - C. Case no. 

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5. Type or write neatly on one or more separate sheets of paper a detailed factual statement of what the attorney did or did not do. Return the sheet(s) with this form. Write on only one side of the complaint form and the additional sheets of paper. Attach copies of documents that prove or help to explain your complaint, such as fee agreements, letters, checks, receipts, itemized billings, and court papers. Send only copies, not original documents, as we are not able to return your documents to you.  
  
 In filing this complaint, you are waiving confidentiality and attorney-client privileges, if any, between you and the attorney named above. This waiver allows the attorney to disclose your confidential information to the extent reasonably necessary to respond to the complaint.
6. **Oath and Signature**  
 I, 

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*Print your name*

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 of the State of Iowa that the allegations of this complaint are true and correct.  
  

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*Month*
*Day*
*Year*

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*Your Signature*

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Send the completed form to:

Iowa Supreme Court Attorney Disciplinary Board  
 Iowa Judicial Branch Building  
 1111 East Court Avenue  
 Des Moines, Iowa 50319  
 Telephone (515) 725-8017



## **CHAPTER 36**

### **GRIEVANCE COMMISSION RULES OF PROCEDURE**

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## **CHAPTER 36**

### **GRIEVANCE COMMISSION RULES OF PROCEDURE**

#### **Rule 36.1 Complaints.**

**36.1(1)** Any complaint of the Iowa Supreme Court Attorney Disciplinary Board (disciplinary board) must be filed with the Iowa Supreme Court Grievance Commission (grievance commission) in the name of the disciplinary board as the complainant and against the attorney named in the charges as the respondent. The disciplinary board must prosecute the complaint and charges before the grievance commission until final disposition.

**36.1(2)** Every complaint filed against an attorney with the grievance commission must be signed and sworn to by the disciplinary board chair and served upon the attorney as provided in rule 36.5. The complaints must be sufficiently clear and specific in their charges to reasonably inform the attorney against whom the complaint is made of the misconduct the attorney is alleged to have committed.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.1(1) formerly appeared as Iowa Court Rule 36.3. Rule 36.1(2) formerly appeared at Iowa Court Rule 35.5. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 36.2 Docket; complaints; filings.**

**36.2(1)** The grievance commission clerk must maintain a permanent docket of complaints in substantially the same manner as the records relating to civil actions in district court. The clerk must separately number and file each complaint. All subsequent answers, motions, applications, petitions, pleadings, orders, or other related documents will be made part of the file.

**36.2(2)** The grievance commission clerk must file and preserve all complaints, answers, motions, applications, petitions, pleadings, orders, records, reports, exhibits, evidence, and other documents or things filed under this chapter or received in evidence in a hearing before the grievance commission in Des Moines, Iowa, and the files must at all times be available to the supreme court or anyone the court designates.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.2(1) formerly was included in Iowa Court Rule 36.4. Rule 36.2(2) formerly appeared at Iowa Court Rule 35.5. Rule 36.2 is amended to conform an internal reference to the new rule numbers and to reduce duplication with rule 36.4. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.3 Report of filing.** The grievance commission clerk must report the filing of each complaint to the grievance commission chair, who must by written order direct that the grievance commission as a whole, or a specified division of the commission, hear each complaint.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.3 formerly appeared as Iowa Court Rule 36.5. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.4 Grievance commission; divisions.** Grievance commission commissioners may act as a body or in such divisions as the grievance commission chair may direct. Each division must consist of five members. The chair must designate the personnel of each division for each complaint as required. The chair must appoint one member to serve as division president. The chair will select one additional member as an alternate.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.4 formerly appeared as Iowa Court Rule 36.2. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 36.5 Notice to respondent.**

**36.5(1)** Upon the filing of a complaint, the grievance commission clerk must serve a written notice of the complaint, a copy of the complaint, and a copy of chapter 36 of the Iowa Court Rules upon the respondent.

**36.5(2)** The grievance commission clerk may serve notice of the complaint by personal service in the manner of an original notice in civil suits or by restricted certified mail to the respondent's last address as shown by records accessible to the supreme court. The notice must inform the respondent of the 20-day period following completed service of the notice to file a written answer to the complaint. Written return of service must be made by the person making the service if by personal service, or by the grievance commission clerk with postal receipts attached to the return if by restricted certified mail, and the return of service must be filed. Service is complete on the date of personal service or on the date shown by the postal receipt of delivery of the notice to the respondent or refusal of the

respondent to accept delivery. The notice is sufficient if it substantially complies with the form that accompanies these rules.

**36.5(3)** If service cannot be obtained pursuant to rule 36.5(2), the grievance commission clerk may serve notice of the complaint on the supreme court clerk, who is appointed to receive service on behalf of attorneys subject to Iowa's disciplinary authority. Iowa R. Prof'l Conduct 32:8.5 cmt. [1]. Service upon the supreme court clerk is deemed to be completed service of the notice on the respondent. Simultaneously with serving notice on the supreme court clerk, the grievance commission clerk must forward the notice and a copy of the complaint to the respondent by restricted certified mail to the respondent's last address as shown by records accessible to the supreme court. The notice must instruct the respondent to file a written answer to the complaint within 20 days after completed service of the notice. The grievance commission clerk must file with the supreme court clerk an affidavit attesting that notice was sent to the respondent by restricted certified mail.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.5 formerly appeared as Iowa Court Rule 36.6. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.6 Filing and service of documents.** All answers, motions, applications, petitions, and pleadings in connection with a complaint must be filed in duplicate. The grievance commission clerk must prepare and mail copies to the respondent, the disciplinary board chair, attorneys of record, and the grievance commission chair if sitting as a whole or to the grievance commission division president to whom the complaint has been referred. On and after the day fixed for hearing, the papers may be filed in duplicate with the grievance commission chair or the division president, who must notify all parties and attorneys of the filing and file a copy with the grievance commission clerk.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.6 formerly appeared as Iowa Court Rule 36.11. It is amended to conform an internal reference to the new rule numbers and reduce duplication with rule 36.2. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.7 Answer.** The respondent must file a written answer to the complaint within 20 days from the completed service of notice. For good cause shown upon written application, the grievance commission may grant an extension of time for filing an answer. If the respondent fails or refuses to file an answer within the time specified, the allegations of the complaint are deemed admitted, and the matter will proceed to a hearing on the issue of the appropriate sanction.

[Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.8 Notices by complainant and respondent.**

**36.8(1) Allegation of misappropriation or conversion.** If the complainant intends to assert that a respondent misappropriated or converted client or third-party funds in violation of rule 32:1.15 or chapter 45 of the Iowa Court Rules, the complainant must specifically allege in its complaint the misappropriation or conversion for personal use without a colorable future claim. The division president may for good cause shown allow amendment of the complaint to specifically allege misappropriation or conversion, provided the respondent is given notice of the amendment and an adequate opportunity to respond before the hearing commences. In granting leave to amend, the division president may impose terms and conditions, including a delay or continuance of the hearing.

**36.8(2) Colorable future claim.** A respondent who intends to rely on the defense of a colorable future claim to funds taken from a trust account to avoid a finding of misappropriation must, within the time set for the making of pretrial motions or at such later time as the division president directs, file written notice of such intention. The division president may for good cause shown allow late filing of the notice. The respondent bears the burden of coming forward with evidence in support of a colorable future claim, but the burden to prove conversion remains with the complainant.

**36.8(3) Failure to comply.** If a respondent fails to abide by the time period described in rule 36.8(2), the respondent may not offer evidence on the issue of colorable future claim without leave of the division president for good cause shown. In granting leave, the division president may impose terms and conditions including a delay or continuance of hearing.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.8 is a new rule, intended to require notice of an allegation of misappropriation and use of the colorable future claim defense in trust account conversion cases. In 2014, the supreme court discussed the advisability of specifically alleging misappropriation or conversion for personal use in the complaint so that the respondent has adequate notice. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Kelsen*, 855 N.W.2d 175 (Iowa 2014). The supreme court subsequently stated that a complaint alleging theft or misappropriation must "specifically allege misappropriation or conversion of a client retainer for personal use without a colorable future claim." *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Cepican*, \_\_\_ N.W.2d \_\_\_ (Iowa 2015). In another 2014 attorney discipline case,

the supreme court addressed allocation of the burden of proof with respect to the so-called colorable future claim defense to conversion of client funds held in trust. The court decided to allocate the burden of coming forward with evidence of a colorable future claim to the respondent attorney, but left the burden of proving conversion with the attorney disciplinary board. *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Carter*, 847 N.W.2d 228 (Iowa 2014). Rule 36.8 requires that the complainant specifically include in its complaint any allegation of misappropriation or conversion, and the rule incorporates a notice requirement for a respondent intending to assert the colorable future claim defense, similar to the notice requirements for alibi, insanity, diminished capacity, and other defenses described in Iowa Rule of Criminal Procedure 2.11(11). [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.9 Challenge regarding impartiality; four-member divisions.**

**36.9(1)** Within the time allowed for filing an answer to the complaint, the respondent may challenge the impartiality of any member of the grievance commission or division by filing a motion setting forth the grounds for challenge. The motion will be disposed of as provided in rule 36.14. If the challenge is sustained, the vacancy thus created will be filled as provided in rule 36.4.

**36.9(2)** With the consent of the complainant and the respondent, a grievance commission division may consist of four members. If the four-member division is evenly divided between a recommendation of sanction and dismissal, the division must enter a dismissal of the complaint pursuant to the provisions of rule 36.19. Upon such dismissal, the complainant may apply for permission to appeal pursuant to rule 36.22.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.9 formerly appeared at Iowa Court Rule 36.13. It is amended to conform an internal rule reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.10 Setting case for hearing; pretrial conference and scheduling order.**

**36.10(1)** After 30 days have elapsed from the date of service of the complaint and a grievance commission division is appointed to hear the matter, the grievance commission clerk must arrange a telephone conference with the division members, the parties, and the attorneys to schedule the hearing, discovery, and other pretrial matters. Notice of the telephone conference must be provided at least 10 days prior to the scheduled telephone conference.

**36.10(2)** The hearing must be held not less than 60 days nor more than 90 days after service of the complaint. At least 10 days before the date set for the hearing, the grievance commission clerk must mail to all parties and attorneys a copy of the order setting the hearing. If a party does not participate in the scheduling conference, the grievance commission clerk must provide notice of the hearing to the party by restricted certified mail or personal service.

**36.10(3)** The division president must file a scheduling order regarding discovery and other pretrial matters after the telephone conference. The scheduling order must specify deadlines for disclosure of expert witnesses, service of discovery requests, service of responses to discovery, exchange of witness and exhibit lists, exchange of exhibits, amendment of pleadings, objections to witnesses or exhibits, motions to resolve discovery issues, and any other pretrial matters the division president deems appropriate.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.10 formerly appeared as Iowa Court Rule 35.7. It is amended to conform an internal reference to the new rule numbers and eliminate duplication with rule 36.11. In addition, provisions for a mandatory pretrial conference and a scheduling order regarding discovery and other pretrial matters are added, reflecting actual grievance commission pretrial practice. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.11 Time and place of hearing.** The grievance commission chair or the division president to whom a complaint has been referred must direct a hearing to be held upon the complaint in the respondent’s county of residence or, at the discretion of the grievance commission chair, within any other judicial district as most nearly serves the convenience of the parties and must designate by written order the time and place for the hearing. If the respondent files written objections to conducting the hearing in the respondent’s county of residence, the hearing must be held at such other place as the grievance commission chair or division president directs by written order, in which case a new notice of the hearing date must be given.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.11 formerly appeared as Iowa Court Rule 36.8. It is amended to eliminate duplication with rule 36.10. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.12 Continuances.** A hearing may not be continued except for good cause, upon written application supported by affidavit. Except in a case of emergency, any motion for continuance must

be filed at least seven days before the day of hearing. Any objections to continuance must be filed promptly.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.12 formerly appeared as Iowa Court Rule 36.9. It is amended to include language formerly in Iowa Court Rule 35.7 regarding the written application and affidavit. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.13 Discovery.** In any disciplinary proceeding or action taken by the disciplinary board, discovery is permitted as provided in Iowa Rules of Civil Procedure 1.501(2) and (3), 1.502 through 1.504, 1.505(2), 1.506, 1.508 through 1.517, 1.701, 1.704, 1.705, and 1.707 through 1.717. The attorney against whom a complaint is filed, in addition to the restriction stated in Iowa Rule of Civil Procedure 1.503(1), is not required to answer an interrogatory pursuant to Iowa Rule of Civil Procedure 1.509, a request for admission pursuant to Iowa Rule of Civil Procedure 1.510, a question upon oral examination pursuant to Iowa Rule of Civil Procedure 1.701, or a question upon written interrogatories pursuant to Iowa Rule of Civil Procedure 1.710, if the answer would be self-incriminatory. In addition, evidence and testimony may be perpetuated as provided in Iowa Rules of Civil Procedure 1.721 through 1.728. If either party is to utilize discovery, it must be commenced within 30 days after service of the complaint. The grievance commission may permit amendments to the complaint to conform to the proof or to raise new matters as long as the respondent has notice and a reasonable time to prepare a defense prior to the date set for hearing. The grievance commission or any grievance commission division may receive an application and may enter an order to enforce discovery or to perpetuate any evidence. Discovery pursuant to this rule includes a respondent's right to obtain a copy of the disciplinary board's file pursuant to Iowa Court Rule 35.4(3).

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.13 formerly appeared as Iowa Court Rule 35.6. It is amended to conform an internal reference to the new rule numbers. Rule 36.13 also is amended based on changes to discovery rules for civil cases adopted effective January 1, 2015, with the goal of selectively incorporating the new discovery rules in civil cases to reflect current discovery practice before the grievance commission. The incorporated rules allow discovery by oral deposition, written interrogatories, requests for admission, requests for production, physical or mental examination, and depositions upon written interrogatories. Iowa Rule of Civil Procedure 1.507 regarding a discovery plan is not incorporated. Current grievance commission practice, incorporated in rule 36.10, is to craft a discovery plan that accommodates the hearing date and enter a scheduling order at the time the hearing date is set by telephone conference. Iowa Rules of Civil Procedure 1.501(1) and 1.505 are not incorporated because the contemplated initial disclosures are not relevant in attorney disciplinary cases or are already subject to disclosure in other parts of the attorney disciplinary process and the timing provisions are not compatible with the pace of attorney disciplinary proceedings. Similarly, Iowa Rule of Civil Procedure 1.702 regarding small claims and Iowa Rule of Civil Procedure 1.706 regarding substituted parties do not apply in attorney disciplinary proceedings. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.14 Prehearing motions and hearings.** If prompt written request is filed by or on behalf of any party for a hearing upon any preliminary motion or application filed in connection with a complaint, the chair of the grievance commission sitting as a whole or the division president to whom such complaint has been referred must by written order set a time and place of hearing on the motion or application and must notify all parties and attorneys. After the hearing, or if none is requested, the grievance commission chair or division president, as the case may be, or any member of the grievance commission or division designated by the chair or president must file a written ruling upon the motion or application, and thereafter all parties must promptly comply with the ruling's terms and conditions.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.14 formerly appeared as Iowa Court Rule 36.12. [Court Order January 26, 2016, effective April 1, 2016]

### **Rule 36.15 Subpoenas.**

**36.15(1)** The grievance commission has subpoena power on behalf of the disciplinary board and the attorney against whom a complaint is filed to compel the appearance of persons or the production of documents during discovery and the final hearing. The grievance commission clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete the subpoena for service. An attorney licensed or otherwise authorized to practice law in Iowa, as an officer of the court, also may issue and sign a subpoena.

**36.15(2)** Any attack on the validity of a subpoena must be heard or determined by the grievance commission chair, or by the division president or any division member to whom a complaint has been referred. Any resulting order is not appealable prior to entry of the grievance commission final ruling, report, or recommendation. Disobedience of a grievance commission subpoena is punishable



as contempt in the district court for the county where the hearing is to be held. A contempt proceeding is not a matter of public record.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.15 formerly appeared as Iowa Court Rule 35.8. It is amended to conform an internal reference to the new rule numbers and to flow more logically. [Court Order January 26, 2016, effective April 1, 2016]

### **Rule 36.16 Stipulated submissions.**

**36.16(1)** The parties may stipulate and agree to waive formal hearing and submit the complaint to the grievance commission for its decision on the basis of a written stipulation the parties approve and file with the grievance commission clerk. The grievance commission may consider the complaint on the basis of the stipulation, refuse to accept the stipulation and proceed with a formal hearing, or accept the stipulation but conduct a limited hearing to elicit such additional evidence as the grievance commission may deem necessary to facilitate informed consideration of the complaint. A stipulation under this rule must be submitted not less than 15 days before the date set for hearing. A stipulation submitted pursuant to this rule may include a statement regarding the proposed discipline, including additional or alternative sanctions as provided in rule 36.19. A stipulation submitted pursuant to this rule must include:

a. For each rule violation stipulated, a separate paragraph stating supporting facts sufficient to allow the grievance commission and the supreme court to find a factual basis for concluding the violation occurred.

b. A separate statement of conclusions of law as to the stipulated violations.

c. A separate description of mitigating and aggravating circumstances.

d. A stipulation as to all exhibits.

e. A waiver of the formal hearing, the parties' agreement to submit the matter on the basis of the stipulation, and an agreement to closure of the record unless the grievance commission directs further proceedings.

f. If the parties stipulate to a sanction, a separate paragraph supported by citations to prior Iowa Supreme Court discipline decisions and a discussion as to why those decisions support the stipulated sanction.

**36.16(2)** If the grievance commission accepts a stipulation of facts, the stipulation binds the parties, the grievance commission, and the supreme court. The grievance commission must interpret the stipulation of facts with reference to its subject matter and in light of the surrounding circumstances and the whole record, including the state of the pleadings, issues involved, and any additional evidence elicited at a limited hearing.

**36.16(3)** A stipulation as to violations or sanctions is not binding on the grievance commission or the supreme court. The grievance commission must consider the statement of proposed discipline, but the statement does not limit the commission. The commission may recommend greater or lesser discipline, including additional or alternative sanctions.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.16 formerly appeared as Iowa Court Rule 35.9. It is amended to conform an internal reference to the new rule numbers. In addition, more specific requirements for the content of stipulated submissions and more specific provisions regarding the effect of stipulations are included based on the decisions of *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Haskovec*, \_\_\_ N.W.2d \_\_\_ (Iowa 2015) and *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Gailey*, 790 N.W.2d 801 (Iowa 2010). [Court Order January 26, 2016, effective April 1, 2016]

### **Rule 36.17 Conduct of hearing.**

**36.17(1)** At the time and place set for the hearing upon any complaint, the grievance commission or division must proceed to hear the evidence, briefs of authorities, and arguments. The hearing is not open to the public.

**36.17(2)** The respondent may present character evidence by sworn affidavit, which must be filed as part of the respondent's exhibits. The affidavit must be admitted into evidence unless the complainant indicates, at least three days prior to the scheduled hearing date, that it intends to cross-examine the affiant. In such case, the affidavit must not be received into evidence, and the affiant must testify in the manner of all other witnesses. The respondent may similarly offer the character evidence of a subpoenaed judge by sworn affidavit, subject to the same constraints if the complainant timely indicates its intention to cross-examine the affiant judge. All other witnesses must testify at the hearing after administration of an oath or affirmation by a grievance commission member or other person authorized by law to administer oaths, and their testimony must be officially reported by a duly qualified court reporter.

**36.17(3)** If the respondent previously has been publicly reprimanded, the respondent's license has been suspended or revoked, or the respondent has been disbarred, a certified copy of said action must be admitted into evidence at any hearing involving disciplinary proceedings without the necessity of a bifurcated hearing. The grievance commission and the supreme court will consider this evidence with all other evidence in the case in determining the respondent's fitness to practice law in the State of Iowa.

**36.17(4)** Either party may use principles of issue preclusion in an attorney discipline case if all of the following conditions exist:

*a.* The issue has been resolved in a civil proceeding that resulted in a final judgment or in a criminal proceeding that resulted in a finding of guilt, even if the disciplinary board was not a party to the prior proceeding.

*b.* The burden of proof in the prior proceeding was greater than a preponderance of the evidence.

*c.* The party seeking preclusive effect has given written notice to the opposing party, not less than 10 days prior to the hearing, of the party's intention to invoke issue preclusion.

**36.17(5)** The respondent may defend and has the right to participate in the hearing in person and by counsel to cross-examine, to be confronted by witnesses, and to present evidence.

**36.17(6)** The presentation of evidence must conform to the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence. The grievance commission chair or division president will determine all questions of procedure, including objections to evidence.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** The majority of rule 36.17 formerly appeared at Iowa Court Rule 36.14. Rules 36.17(3) and (4) formerly appeared at Iowa Court Rule 35.7. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.18 Oaths.** Any member of the grievance commission may administer oaths or affirmations to all witnesses and must cause such testimony to be officially reported by a court reporter.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.18 formerly appeared as Iowa Court Rule 36.10. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.19 Action upon complaint; report of decision.**

**36.19(1)** At the conclusion of a hearing upon any complaint against an attorney, the grievance commission may permit a reasonable time for the parties to file post-hearing briefs and arguments. The commissioners must dismiss the complaint, issue a private admonition, or recommend that the supreme court reprimand the respondent or suspend or revoke the respondent's license. If the commissioners recommend a reprimand, suspension, or revocation, they must file with the supreme court clerk a report of their findings of fact, conclusions of law, and recommendations within 60 days of the date set for filing of the last responsive brief and argument. The report must be titled in the name of the complainant versus the accused attorney as respondent. As part of its report, the grievance commission may recommend additional or alternative sanctions such as restitution, costs, practice limitations, appointment of a trustee or receiver, passage of a bar examination or the Multistate Professional Responsibility Examination, attendance at continuing legal education courses, or other measures consistent with the purposes of attorney discipline. The report must contain a proof of service showing it was served upon the complainant and the respondent as provided in Iowa Rule of Appellate Procedure 6.701. The matter then stands for disposition in the supreme court.

**36.19(2)** All reports and recommendations of the commissioners must be concurred in by at least 3 members of the division or at least 12 members of the grievance commission, as the case may be, all of whom must have been present throughout the proceedings. Any commissioner has the right to file with the supreme court clerk a dissent from the majority determination or report. The clerk must promptly serve a copy of a dissent on the respondent.

**36.19(3)** If the grievance commission dismisses the complaint or issues a private admonition, no report may be made to the supreme court except as provided in rule 34.13; however, the grievance commission must, within 10 days of its determination, serve a copy of its determination or report on the complainant and the attorney concerned as provided in this rule. If the complainant does not apply for an appeal within 10 days after such service, the grievance commission's determination is final.

**36.19(4)** If the commissioners dismiss the charges, no publicity will be given to any of the proceedings except at respondent's request.

**36.19(5)** A copy of the grievance commission's report must be filed with the Client Security Commission.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.19 formerly appeared as Iowa Court Rule 36.15. It is amended to conform an internal reference to the new rule numbers and to complement rule 36.20. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.20 Additional time for decision upon request.** If the grievance commission cannot reasonably make its determination or file its report within 60 days of the date set for the filing of the last responsive brief and argument, the division president may file a request for an extension of time with the grievance commission clerk prior to expiration of the 60-day period. The clerk must serve a copy of the request on the grievance commission chair and the parties. The grievance commission chair must file a written decision on the extension request with the grievance commission clerk, who must serve a copy on all parties. If the division fails to file its decision or a request for an extension of time within 60 days of the date set for the filing of the last responsive brief and argument, the grievance commission clerk must promptly notify the director of the office of professional regulation of the failure.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.20 formerly appeared at Iowa Court Rule 35.10. It is amended to conform an internal reference to the new rule numbers and to reflect the provisions moved to or already present in rule 36.19. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.21 Supreme court disposition if no appeal.**

**36.21(1)** Within 14 days after a report is filed with the supreme court clerk, the grievance commission clerk must transmit to the supreme court clerk the entire record made before the grievance commission. If no appeal is taken or application for permission to appeal is filed within the 10-day period provided in rule 36.22, the supreme court will set a date for submission of the grievance commission report. The supreme court will notify the parties that they may file written statements with the supreme court in support of or in opposition to the discipline the grievance commission recommends. Statements in support of or in opposition to the recommended discipline must be served and filed no later than seven days before the date set for submission. Upon submission, the supreme court will proceed to review de novo the record made before the grievance commission and determine the matter without oral argument or further notice to the parties. Upon de novo review the supreme court may impose a lesser or greater sanction than the discipline the grievance commission recommends.

**36.21(2)** The supreme court may revoke or suspend the license of an attorney admitted to practice law in Iowa upon any of the following grounds: conviction of a felony, conviction of a misdemeanor involving moral turpitude, violation of any provision of the Iowa Rules of Professional Conduct, or any cause now or hereafter provided by statute or these rules.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.21 formerly appeared as Iowa Court Rule 35.11. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.22 Appeal.**

**36.22(1)** Pursuant to rule 36.19, the respondent may appeal to the supreme court from the report or recommendation the grievance commission files. The respondent's notice of appeal must be filed with the grievance commission clerk within 10 days after service of the report or recommendation on the respondent. The respondent must serve a copy of the notice of appeal on the complainant or complainant's counsel pursuant to Iowa Rule of Appellate Procedure 6.701. Promptly after filing the notice of appeal with the grievance commission clerk, the respondent must mail or deliver a copy of the notice to the supreme court clerk.

**36.22(2)** The complainant may apply to the supreme court for permission to appeal from a determination, ruling, report, or recommendation of the grievance commission. The application must be filed within 10 days after service of the determination, ruling, report, or recommendation on the complainant. The supreme court may grant such appeal in a manner similar to the granting of interlocutory appeals in civil cases under the Iowa Rules of Appellate Procedure. The filing fee and the docket fee may be waived upon the complainant's written request.

**36.22(3)** An appeal of the grievance commission's dismissal of a complaint or of the grievance commission's decision to issue a private admonition must remain confidential. In making such application, and in any subsequent briefs, the complainant must refer to the respondent as "Attorney

Doe No. (insert grievance commission number),” instead of using the respondent’s name. All references to the respondent during oral arguments must be to “Attorney Doe.” In the event the supreme court reverses or modifies the report of the grievance commission, the court order of reversal or modification is a public record.

**36.22(4)** After a notice of appeal is filed or permission to appeal is granted, the appeal must proceed pursuant to the Iowa Rules of Appellate Procedure to the full extent those rules are not inconsistent with this chapter. Within seven days of the filing of the notice of appeal or the filing of the order granting permission to appeal, appellant must pay the filing fee pursuant to Iowa Rule of Appellate Procedure 6.702 and must file the combined certificate Iowa Rule of Appellate Procedure 6.804 requires. The matter must be captioned under the title given to the action before the grievance commission with the appellant identified as such pursuant to Iowa Rule of Appellate Procedure 6.109(2), unless rule 36.22(3) requires otherwise. The abbreviated time limits specified in Iowa Rule of Appellate Procedure 6.902 apply. Extensions of time must not be granted except upon a verified showing of the most unusual and compelling circumstances. Review is de novo. If a respondent’s appeal is dismissed for lack of prosecution pursuant to Iowa Rule of Appellate Procedure 6.1202 or for any other reason, the supreme court must proceed to review and decide the matter pursuant to rule 36.21 as if no appeal had been taken.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.22 formerly appeared as Iowa Court Rule 35.12. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.23 Harmless error; substantial prejudice test.** An omission, irregularity, or other defect in procedure will not render void or ineffective any act of the grievance commission, division, or any member thereof unless substantial prejudice is shown to have resulted.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.23 formerly appeared as Iowa Court Rule 35.17. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

#### **Rule 36.24 Costs.**

**36.24(1)** In the event that an order of revocation, suspension, or public reprimand results from formal charges of misconduct, the supreme court will assess against the respondent the costs of the proceeding. For the purposes of this rule, costs include those expenses normally taxed as costs in state civil actions pursuant to the provisions of Iowa Code chapter 625.

**36.24(2)** Within 30 days of the filing of the grievance commission report, the grievance commission must serve the complainant and the respondent with a bill of costs and file the bill with the supreme court clerk. An appeal does not obviate this requirement. The complainant and the respondent have 10 days from the date of service to file written objections with the supreme court and the grievance commission clerk. Any objections filed must be considered by the grievance commission division president or the president’s designee. The president or the designee must rule on the objections within 10 days. The supreme court will consider the ruling and objections upon disposition of the matter under rule 36.21 or 36.22. The supreme court clerk must tax additional costs associated with an appeal as in other civil actions.

**36.24(3)** In its final decision, the supreme court will order the respondent to pay restitution to the complainant for such costs as the supreme court may approve. A suspended or disbarred attorney may not file an application for reinstatement or readmission until the amount of such restitution for costs assessed under this rule is fully paid or waived by the supreme court.

[Court Order January 26, 2016, effective April 1, 2016]

**COMMENT:** Rule 36.24 formerly appeared as Iowa Court Rule 35.27. It is amended to conform an internal reference to the new rule numbers. [Court Order January 26, 2016, effective April 1, 2016]

**Rule 36.25 Forms.****Rule 36.25 — Form 1: *Notice of Complaint.***

<b>Before the Iowa Supreme Court Grievance Commission</b>	
<b>Iowa Supreme Court</b> <b>Attorney Disciplinary Board,</b> <b>Complainant,</b> <b>vs.</b>  _____, Attorney at Law, of <i>Full name: first, middle, last</i> _____, Iowa  <b>Respondent.</b>	<b>Notice of Complaint</b>

To: \_\_\_\_\_  
*Respondent's name*

Respondent:

You are notified that there is now a complaint on file with the Iowa Supreme Court Grievance Commission Clerk at the Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319, alleging that you have committed unethical practices as an attorney and counselor at law.

A copy of the complaint and a copy of chapter 36 of the Iowa Court Rules are attached and made a part of this notice.

You are further notified to file your written answer to the complaint within 20 days from the completed service of this notice and to abide by any further orders of the grievance commission made in accordance with chapter 36 of the Iowa Court Rules.

You are further notified that the grievance commission will hear this complaint in accordance with the rules and will take action as may be warranted by the facts and circumstances disclosed at the hearing.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
*Month Year*

\_\_\_\_\_  
*Grievance Commission Clerk*  
 Iowa Judicial Branch Building  
 1111 East Court Avenue  
 Des Moines, Iowa 50319



## **CHAPTER 39**

### **CLIENT SECURITY COMMISSION**

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Rule 39.18	Requirement for death or disability plan





## CHAPTER 39

### CLIENT SECURITY COMMISSION

**Rule 39.1 Client Security Commission.**

**39.1(1) *Commission.*** There is hereby created a Client Security Commission, hereinafter referred to as “commission,” which shall have the duties and powers provided in this chapter.

**39.1(2) *Duties of commission.*** The commission shall have the following duties and powers as limited and defined in this chapter:

*a.* To examine lawyer defalcations and breaches of Iowa Rules of Professional Conduct, the rules relating to the discipline of members of the Iowa bar, and to make recommendations to the supreme court concerning rule changes deemed necessary or desirable in this area.

*b.* To assist the court in administering both preventive and remedial attorney disciplinary procedures contained in these rules or other court rules.

*c.* To administer and operate the Clients’ Security Trust Fund of the Bar of Iowa, as hereinafter created, designated as the “fund.”

**39.1(3) *Appointment of commissioners.*** The supreme court shall appoint five members of the Iowa bar and two laypersons who are residents of this state to the commission. The original appointment shall be two commissioners for a one-year term, two for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms, all subsequent appointments shall be for a term of four years, and any commissioner who has served two full terms shall not be eligible for reappointment. A vacancy occurring during a term shall be filled by the supreme court for the unexpired portion thereof.

**39.1(4) *Organization and meetings.*** The commissioners shall organize annually and shall then elect from among their number a chair and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chair or of the majority of the commissioners. Five commissioners shall constitute a quorum and may transact all business except as may be otherwise provided by this chapter and chapter 40 of the Iowa Court Rules.

**39.1(5) *Regulations.*** The commission shall adopt regulations, consistent with this chapter and subject to the approval of the supreme court, concerning all of the powers and duties granted to and imposed upon the commission by this chapter.

**39.1(6) *Reimbursement.*** The commissioners shall serve without compensation but shall be entitled to reimbursement from the fund for their expenses reasonably incurred in the performance of their duties.

[Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; May 25, 2004; April 20, 2005, and July 1, 2005, effective July 1, 2005]

**Rule 39.2 Principal executive officer.**

**39.2(1) *Appointment.*** The director of the office of professional regulation serves as the principal executive officer of the client security commission. Wherever in this chapter a reference to the “director” appears, it refers to the director of the office of professional regulation. The director may designate an assistant director for boards and commissions to assist with the duties described in this chapter.

**39.2(2) *Duties of director.*** Subject to the supervision of the supreme court and the commission, the director shall do the following:

*a.* Collect attorney fees and assessments for the fund and report to the commission the names and addresses of all attorneys who fail to pay the fee and assessment.

*b.* Serve as executive secretary to the commission and assist in the operation and administration of the fund.

*c.* Conduct investigations and audits of attorneys’ accounts and office procedures to determine compliance with this chapter, Iowa Rule of Professional Conduct 32:1.15, and chapter 45 of the Iowa Court Rules and report violations to the commission.

*d.* Maintain an office in such place as the supreme court shall designate, act as a liaison between the court, the commission, and other commissions, committees, boards, and personnel serving a function in the disciplinary system, and maintain for the court records of disciplinary proceedings and such other information and data as the court shall require.

e. Upon request of the commission, institute disciplinary proceedings before the grievance commission pursuant to chapter 35 of the Iowa Court Rules.

f. Perform such other functions and duties as may be directed by the supreme court.  
[Court Order December 5, 1973; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; November 20, 2015, effective January 1, 2016]

### **Rule 39.3 Clients' security trust fund of the bar of Iowa.**

**39.3(1) *Creation, operation and purpose.*** A trust fund, to be known as the "Clients' Security Trust Fund of the Bar of Iowa" (hereinafter, the "fund") is hereby authorized and created.

**39.3(2) *Administration.*** The fund shall be operated and administered by the commission in accordance with this chapter.

**39.3(3) *Purpose.*** The purpose of the fund shall be to prevent defalcations by members of the Iowa bar, and insofar as practicable, to provide for the indemnification by the profession for losses caused to the public by the dishonest conduct of members of the bar of this state, and to provide funding for the administration of the lawyer disciplinary system and other programs which impact the disciplinary system including, but not limited to, the Iowa Lawyer's Assistance Program.

**39.3(4) *Powers and duties of commission relating to the fund.*** The commission, in addition to the powers granted elsewhere in this chapter, shall have the following powers and duties:

a. To receive, hold, manage, and distribute, pursuant to the direction of the supreme court and this chapter, the moneys raised hereunder, and any other amounts that may be received by the fund through voluntary contributions or otherwise.

b. To adopt, subject to the approval of the supreme court, regulations for the administration of the fund and the procedures for presentation, consideration, recognition, rejection and payment of claims, and for conducting business. A copy of such regulations shall be filed with the clerk of the supreme court.

c. To enforce claims for restitution, arising by subrogation or assignment or otherwise.

d. To invest the fund, or any portion thereof, in those investments and in the percentages authorized by Iowa Code section 97B.7, (investments for Iowa public employees' retirement system); provided, however, the commission shall not be required to invest such portions of the fund as it may deem necessary to be currently available for payment of claims and other expenses required by this chapter. All interest or other income received in the operation of the fund shall become a part of the fund.

e. To employ and compensate consultants, agents, legal counsel and employees.

f. To delegate the power to perform routine acts which may be necessary or desirable for the operation of the fund, including the power to authorize disbursements for routine operating expenses of the fund, and all necessary expenses of the assistant administrator and staff in the performance of their duties; but authorization for payment of claims shall be made only by the commission under the provisions of this chapter.

g. To sue in the name of the commission without joining any or all individual commissioners.

h. To purchase complementary fidelity coverage for the fund in such amount and with such limitations or deductible limits as in its discretion it determines proper.

i. To pay reasonable and necessary attorney fees incurred by the commissioners of the supreme court in implementing chapter 35 of the Iowa Court Rules in disciplinary proceedings based on attorney defalcations or which are initiated pursuant to rule 39.2(3)(e).

j. To fund programs which the commission believes will assist in preventing defalcations by attorneys. The annual allocation for any such program shall not exceed two and one-half percent of the fund value as of the beginning of the fiscal year in which the funding is to occur. No such funding may be provided unless there is at least twice the minimum balance required by rule 39.6(3) in the fund at the beginning of the fiscal year in which the funding is to occur.

**39.3(5) *Applications to the supreme court.*** The commission may apply to the supreme court for interpretations of this chapter and of the extent of the commission's powers thereunder and for advice regarding the proper administration of the fund. Interpretations of the supreme court shall be obligatory when rendered.

[Court Order November 9, 2001, effective February 15, 2002; November 26, 2013, effective December 1, 2013]

**Rule 39.4 Audit — banking — budget.**

**39.4(1) *Audit and report.*** On March 1 of each year, and at such additional times as the supreme court may order, the commission shall file with the supreme court a written report reviewing in detail the administration of the fund during the preceding calendar year together with an audit of the fund certified by a certified public accountant licensed to practice in Iowa.

**39.4(2) *Banking and disbursements.*** The director of the office of professional regulation must maintain the assets of the fund in a separate account and may disburse moneys from the fund only at the direction of the supreme court or upon the action of the commission pursuant to this chapter. A separate bookkeeping account designated as the disciplinary fund account must be maintained within the fund for moneys derived from the annual disciplinary fee set out in rule 39.5. Fees, penalties, or investment income derived from the investment of the income from annual disciplinary fees and penalties must be placed in the disciplinary fund account.

**39.4(3) *Budget.*** At least 60 days prior to the commencement of each fiscal year, the director of the office of professional regulation must submit to the supreme court its budget of operations of such year, which may be amended thereafter as necessity dictates.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; November 20, 2015, effective January 1, 2016]

**Rule 39.5 Annual disciplinary fee.** As a condition to continuing membership in the bar of the supreme court, including the right to practice law before Iowa courts, every bar member, unless exempted, shall pay to the commission through the office of professional regulation an annual fee as determined by the supreme court to finance the disciplinary system. The annual fee shall be due on or before March 10 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31. Members of the bar of the supreme court who certify in writing to the commission that they are a justice, judge, associate judge, or full-time magistrate of any court, spend full time in the military service of the United States following admission to the Iowa bar, are admitted on examination to the bar of Iowa during the current calendar year, or are issued a certificate of exemption pursuant to the provisions of rule 39.7 shall be exempt from payment of this fee.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; December 2, 2011; April 25, 2014]

**Rule 39.6 Fund assessments.**

**39.6(1) *Assessments.*** As a condition to continuing membership in the bar of Iowa, including the right to practice law before Iowa courts, every bar member, unless exempted under the provisions of rule 39.6(6) or rule 39.7, shall pay to the commission through the office of professional regulation the assessment specified in rule 39.6(2), 39.6(3), or 39.6(4), or as provided by court order. The assessment shall be paid annually and deposited in the fund created pursuant to the provisions of rule 39.3. Assessments shall be due on or before March 10 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31.

**39.6(2) *Initial and regular assessment schedule.***

For the calendar year of the member's admission on examination to the bar of Iowa, and for the calendar year thereafter. . . . . None.

For the calendar year of the member's admission on motion to the bar of Iowa, a payment toward the \$200 initial assessment in the amount of . . . . . \$50.

For the years after those described above, until an initial total of \$200 in assessment has been paid, a payment of . . . . . \$50 annually.

For the years after an initial total of \$200 in assessments has been paid, unless a special assessment is payable under rule 39.6(4), a regular annual assessment of . . . . . \$50 annually.

[Court Order June 13, 1979; November 13, 1984; November 15, 1985; November 11, 1986; November 19, 1987; October 20, 1988; November 16, 1989; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; December 5, 2007; November 26, 2013, effective December 26, 2013]

**39.6(3) *Certificate of sufficiency.*** The commission shall determine the net value of the cash and securities in the fund as of December 1 of each year. The commission shall file with the supreme court prior to December 31 of each year a certificate regarding sufficiency of the fund. Whenever the value of such assets shall equal less than \$900,000, after deducting all claims and requests for reimbursement against the fund, not disposed of at the date of valuation, and all expenses properly chargeable against the fund, a special assessment as set forth in rule 39.6(4) shall be payable for the

next calendar year after the date of the certificate of sufficiency. This special assessment shall be paid in lieu of the regular assessment set in rule 39.6(2), by each member of the bar who has already paid the \$200 initial assessment.

**Comment:** The November 26, 2013, amendment to new rule 39.6(3), raising the threshold used to calculate the sufficiency of the fund, is effective for the sufficiency calculation to be performed beginning December 1, 2013.

**39.6(4) *Special assessment.*** For any calendar year in which a special assessment is payable in lieu of the regular assessment set in rule 39.6(2), the special assessment is established as follows:

*a. Lawyers in full-time private practice.* Members of the bar of Iowa in full-time private practice shall pay to the commission a special assessment of \$140.

*b. Lawyers in part-time private practice.* Members of the bar of Iowa who derive net income of less than \$10,000 from the practice of law in Iowa during the preceding calendar year shall pay to the commission a special assessment of \$70. Net income from the practice of law shall be for the purposes of this rule that amount shown on the federal income tax return of such members for the appropriate year as “profit or loss from a business or profession.” The commission may require members so electing to submit to the commission a copy of their federal income tax return for the appropriate year to substantiate the amount due hereunder.

*c. Judges, government attorneys, corporate counsel.* Any member of the bar of Iowa who certifies in writing to the commission that the member is a justice, judge, associate judge, or full-time magistrate of any court, or one who performs legal services only for a governmental unit, or one who performs legal services only for a particular person, firm, or corporation (other than a professional legal corporation or a law firm) and stands in the legal capacity with such person, firm, or corporation as an employee, shall pay to the commission a special assessment of \$70. However, a retired judge or justice recalled for temporary service shall not be required to pay an assessment or surrender their certificate of exemption.

**39.6(5) *Multijurisdictional practitioners.*** Lawyers practicing in Iowa under the provisions of rule of professional conduct 32:5.5(d)(2) and rule 39.16 shall pay the same initial, regular, and special assessments as members of the bar of Iowa in private practice.

**39.6(6) *Members in full-time military service.*** Any member of the bar of Iowa who certifies in writing that the member is serving full-time in the military service of the United States shall be exempt from any assessment under this rule.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007; November 26, 2013, effective December 26, 2013; April 25, 2014]

**Rule 39.7 Certificate of exemption — required statement.** A member of the bar of the supreme court who is not engaged in the practice of law in the state of Iowa may be granted a certificate of exemption by the commission, and thereafter no fee or assessment shall be required from such member unless the member thereafter engages in the practice of law in the state of Iowa, in which case the certificate of exemption shall without further order of court stand revoked and the member shall file at once the statement required by rule 39.8(1), and the questionnaire required by rule 39.11 and pay the fee and assessment due under rules 39.5 and 39.6. A member of the bar requesting a certificate of exemption shall file with the director the statement required by rule 39.8(1), and such part of the rule 39.11 questionnaire as the director may deem necessary to determine the member’s status. The practice of law as that term is employed in this chapter includes the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns as well as the representation of others in any Iowa courts, the right to represent others in any Iowa courts, or to regularly prepare legal instruments, secure legal rights, advise others as to their legal rights or the effect of contemplated actions upon their legal rights, or to hold oneself out to so do; or to be one who instructs others in legal rights; or to be a judge or one who rules upon the legal rights of others unless neither the state nor federal law requires the person so judging or ruling to hold a license to practice law.

[Court Order November 9, 2001, effective February 15, 2002; December 5, 2007]

### **Rule 39.8 Enforcement.**

**39.8(1)** To facilitate the collection of the annual fee and assessment provided for in rules 39.5 and 39.6, all members of the Iowa bar required to pay the fee and assessment, and those exempted other than by rule 39.7, shall, on or before March 10 of each year, file a statement, on a form prescribed by the director, setting forth their date of admission to practice before the supreme court, their current

residence and office addresses, and such other information as the director may from time to time direct. In addition to such statement, every bar member shall file a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons admitted to practice before the supreme court shall file the statement required by this rule at the time of admission but no annual fee or assessment shall be payable until the time above provided. All attorneys failing to file the required statement by March 10 of each year shall, in addition to the annual fee and assessment provided for above, pay a penalty as set forth in the following schedule if the statement is filed after March 10. The penalty fees collected shall be used to pay the costs of administering the fund, or for such other purposes within the office of professional regulation as the supreme court may direct.

**Penalty Schedule:**

If Filed:	Penalty:
After March 10 but before April 12	\$100
After April 11 but before May 12	\$150
After May 11	\$200

**39.8(2)** Attorneys who fail to timely pay the fee and assessments required under rules 39.5, 39.6, and 39.17, or fail to file the statement or supplement thereto provided in rule 39.8(1), may have their right to practice law suspended by the supreme court, provided that at least 15 days prior to such suspension, a notice of delinquency has been served upon them in the manner provided for the service of original notices in Iowa R. Civ. P. 1.305, or has been forwarded to them by restricted certified mail, return receipt requested, addressed to them at their last-known address. Such attorneys must be given the opportunity during said 15 days to file in duplicate in the office of professional regulation an affidavit disclosing facts demonstrating the noncompliance was not willful and tendering such documents and sums and penalties which, if accepted, would cure the delinquency, or to file in duplicate in the office of the clerk of the supreme court a request for hearing to show cause why their license to practice law should not be suspended. A hearing must be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, an attorney is suspended, the attorney must be notified thereof by either of the two methods above provided for notice of delinquency.

**39.8(3)** Any attorney suspended pursuant to this chapter shall do all of the following:

- a. Within 15 days in the absence of co-counsel, notify clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer.
- b. Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.
- c. Within 30 days refund any part of any fees paid in advance that have not been earned.
- d. Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the suspension and consequent disqualification to act as a lawyer after the effective date of such discipline.
- e. Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.
- f. Keep and maintain records of the steps taken to accomplish the foregoing.
- g. Within 30 days file proof with the supreme court and with the Iowa Supreme Court Attorney Disciplinary Board of complete performance of the foregoing, and this shall be a condition for application for readmission to practice.

**39.8(4)** Any attorney suspended pursuant to this chapter shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills, and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

**39.8(5)** Attorneys who have been suspended pursuant to this chapter or who currently hold a certificate of exemption and who practice law or who hold themselves out as being authorized to practice law in this state are engaged in the unauthorized practice of law and may also be held in

contempt of the court or may be subject to disciplinary action as provided by chapter 35 of the Iowa Court Rules.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; April 25, 2008; June 5, 2008, effective July 1, 2008; January 19, 2010; April 25, 2014; November 20, 2015, effective January 1, 2016]

### **Rule 39.9 Claims.**

**39.9(1)** The commission shall consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state acting either as an attorney or fiduciary, provided that all of the following are established:

*a.* Said conduct was engaged in while the attorney was a practicing member of the bar of this state and the claim arises out of the practice of law in this state. The commission shall not consider any claim resulting from conduct engaged in after an attorney's license to practice in Iowa has been revoked. For purposes of this rule, a practicing member of the bar of this state is:

(1) A member of the bar of Iowa whose license is active and in good standing at the time of the dishonest conduct giving rise to the claim, or

(2) A member of the bar of Iowa whose license has been suspended and whom the client reasonably believes to be licensed, active, and in good standing at the time of the dishonest conduct giving rise to the claim. If the attorney has been suspended more than six months prior to the time of the dishonest conduct giving rise to the claim, it shall be presumed that the client was unreasonable in believing that the attorney was licensed, active, and in good standing at the time of the dishonest conduct.

(3) An attorney who establishes an office or other systematic and continuous presence in Iowa for the practice of law under the provisions of rule of professional conduct 32:5.5(d)(2) and pays the annual fee and assessment due under rules 39.5 and 39.6.

*b.* Such defalcation or dishonest conduct occurred after January 1, 1974.

*c.* The claim is made within one year after the client's discovery of the loss; provided, however, such time limitation in unusual circumstances may be extended by the commission in its discretion for good cause shown.

*d.* The claim is made directly by or on behalf of the injured client or the client's personal representative or, if a corporation, by or on behalf of itself or its successors in interest.

*e.* The commission is satisfied that there is no other source or collateral source for the reimbursement of the loss.

*f.* Claims shall not be paid which arise out of an employer-employee relationship as distinguished from a lawyer-client relationship or a fiduciary relationship.

**39.9(2)** The commission is invested with the power, which it shall exercise in its sole discretion, to determine whether a claim merits reimbursement from the fund, and if so, the amount of such reimbursement, the time, place and manner of its payment, the conditions upon which payment shall be made, and the order in which payment shall be made. The commission's powers in this respect may be exercised only by the affirmative vote of at least four commissioners. In making such determinations, the commission shall consider among other appropriate factors, the following:

*a.* The amounts available and likely to become available to the fund for the payment of claims and the size and number of claims which are likely to be presented.

*b.* The total amount of reimbursable losses in previous years for which total reimbursement has not been made, if any, and the total assets of the fund.

*c.* The amount of the claimant's loss as compared to the amount of losses sustained by other eligible claimants.

*d.* The degree of hardship suffered by the claimant as a result of the loss.

*e.* The degree of negligence, if any, of the claimant which may have contributed to the loss.

*f.* The total amount of losses caused by defalcations of any one attorney or associated group of attorneys.

**39.9(3)** The commission shall, by regulation approved by the supreme court, fix the maximum amount which any one claimant may recover from the fund and the aggregate maximum amount which may be recovered because of the dishonest conduct of any one attorney.

**39.9(4)** No claimant or any other person or organization shall have any right in the fund as third-party beneficiary or otherwise. Reimbursement by claim on the fund shall be a matter of grace and not of right.

**39.9(5)** The commission may require as a condition to payment that the claimant execute an assignment of claimant's right against the defaulting lawyer.

**39.9(6)** No claimant need be represented by counsel before the commission. No attorney representing a claimant shall receive a fee for services from the fund. Any agreement for compensation between a claimant and any attorney retained for prosecution of the claim shall be subject to the approval of the commission.

**39.9(7)** The commission may request individual lawyers, bar associations, and other organizations of lawyers to assist the commission in the investigation of claims.

**39.9(8)** The payment or denial of any claim filed under the provisions of this rule shall be inadmissible as evidence in any disciplinary or contempt proceeding.

[Court Order December 5, 1973; April 22, 1974; October 16, 1974; April 9, 1975; April 10, 1975; August 29, 1975; October 28, 1976; November 21, 1977; January 15, 1979; June 20, 1980; April 21, 1982; November 13, 1984; April 25, 1985; February 16, 1990, effective March 15, 1990; December 15, 1994, effective January 3, 1995; March 6, 1995; January 24, 2000; November 9, 2001, effective February 15, 2002; February 20, 2012; December 10, 2012]

#### **Rule 39.10 Investigations and audits.**

**39.10(1)** Each member of the bar of Iowa, in filing the statement required by rule 39.8(1), shall authorize the director to investigate, audit, and verify all funds, securities, and other property held in trust by the member, and all related accounts, safe deposit boxes, and any other forms of maintaining trust property as required by Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the Iowa Court Rules, together with deposit slips, canceled checks, and all other records pertaining to transactions concerning such property.

**39.10(2)** Each member of the bar of Iowa shall comply promptly with any request by the director to execute and deliver to the director a written authorization, directed to any bank or depository, for the director to audit and inspect such accounts, safe deposit boxes, securities, and other forms of maintaining trust property by the member in such bank or other depository.

**39.10(3)** Each member of the bar of Iowa must do all of the following:

*a.* Cooperate fully with the director in any investigation, audit, or verification of any funds, securities, or property held in trust by that lawyer.

*b.* Answer all questions posed by the director which relate to any investigation, audit, or verification, unless claiming the privilege against self-incrimination.

*c.* Retain complete records of all trust fund transactions for a period of not less than six years following completion of the matter to which they relate, in accordance with Iowa Rule of Professional Conduct 32:1.15 and Iowa Ct. R. 45.2(3).

**39.10(4)** The commission with the approval of the supreme court may retain, compensate from the fund, and furnish as staff for the director, such public or certified accountants, investigators, or attorneys as may be deemed necessary to carry out the duties and functions imposed upon the director. When acting under the director's supervision and direction, such staff personnel shall have all the powers granted to the director by this chapter.

**39.10(5)** When the investigation, audit, or verification provisions of this chapter disclose, in the opinion of the director, a violation of the Iowa Rules of Professional Conduct, or when the member of the bar of Iowa affected by the investigation, audit, or verification has refused to comply with the provisions of this chapter, the director shall promptly report such circumstances to the commission. A copy of such report shall be furnished to the member affected.

**39.10(6)** However, client trust funds and property held by an Iowa licensed attorney whose law office is situated in another state shall not be subject to investigation, audit, or verification except to the extent such funds and property are related to matters affecting Iowa clients. State or federal funds or property subject to state or federal auditing procedures and in control of an Iowa licensed attorney employed full- or part-time by a state or the United States shall not be subject to investigation, audit, or verification under the provisions of this chapter.

**39.10(7)** The costs of performing a trust account audit must be assessed to the attorney or attorneys who are signatories on the account if the audit reveals the account was not in substantial compliance with Iowa Rule of Professional Conduct 32:1.15 or chapter 45 of the Iowa Court Rules, and one or more of the following circumstances caused performance of the audit:

*a.* A claim for reimbursement was filed under the provisions of rule 39.9 based on the alleged conduct of the attorney or attorneys who are signatories on the account.

*b.* A notice of insufficient funds to honor an instrument drawn on the account was reported to the commission under the provisions of rule 45.4(4)(c).

c. A complaint alleging an attorney signatory on the account committed a disciplinary infraction was filed with the attorney disciplinary board under the provisions of rule 34.1.

d. An attorney signatory on the account was suspended from practice under the provisions of chapter 35.

e. An attorney signatory on the account failed to timely file the statement and questionnaire required by rule 39.8.

f. An attorney signatory on the account was served a 15-day notice under rule 39.8(2) based on failure to cooperate with investigation and audit of the account as required by rule 39.10.

g. A trustee was appointed under the provisions of rule 35.17 or 35.18 for an attorney signatory on the account.

**39.10(8)** Costs assessed under rule 39.10(7) are due upon assessment by the commission. Costs assessed under this rule must be paid as a condition of reinstatement, and may be collected by the commission as part of the annual statement and assessment required by rule 39.8 if not previously paid.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; November 20, 2015, effective January 1, 2016]

### **Rule 39.11 Annual questionnaire.**

**39.11(1)** The director under the supervision of the supreme court and the commission shall prepare a questionnaire to be annually submitted to and completed by each member of the bar of Iowa except those who have been issued a certificate of exemption pursuant to rule 39.7. Said questionnaire may be (but is not required to be) incorporated as a part of the annual statement provided in rule 39.8(1). This questionnaire shall elicit information to determine whether the member is complying with the Iowa Court Rules, including but not restricted to, Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the rules. The commission may prescribe an electronic format for the questionnaire and annual statement and require submission of the questionnaire and annual statement in that form.

**39.11(2)** A failure to complete and return a questionnaire shall be addressed as provided in rule 39.12.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005; December 5, 2007; June 5, 2008, effective July 1, 2008]

### **Rule 39.12 Investigations, audits, and annual questionnaire — enforcement.**

#### **39.12(1) *Failure of bar members to cooperate.***

a. The continued right of a member of the Iowa bar to practice law in this state is conditioned upon the member executing and delivering the authorization provided in rule 39.10(2), furnishing the cooperation required in rule 39.10(3), and completing and returning the annual questionnaire described in rule 39.11. Upon failure of a member of the Iowa bar to comply with any of the rules specified in this paragraph, the member's right to practice law before Iowa courts may be suspended, following the procedure specified in rule 39.8(2).

b. A member of the bar of Iowa who willfully fails to comply with those rules enumerated in rule 39.12(1)(a) may be held in contempt of the supreme court or may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules.

#### **39.12(2) *Violation of the Iowa Rules of Professional Conduct.***

a. When the audit, investigation, or verification of funds, securities, or other property held in trust by any member of the bar of Iowa, or a return of any member on the annual questionnaire, discloses an apparent violation of the Iowa Rules of Professional Conduct, the director upon request of the commission, or the commission, may institute disciplinary proceedings under chapter 35 of the Iowa Court Rules for the suspension or revocation of the member's license to practice law in this state.

b. All information obtained by the director and staff by virtue of the audits, investigations and verifications, and annual questionnaire, shall be held in strict confidence by them and by the supreme court and the commission unless otherwise directed by the supreme court or unless proceedings are initiated pursuant to chapter 35 of the Iowa Court Rules or Iowa Code section 602.10123. If proceedings are initiated pursuant to chapter 35 of the Iowa Court Rules, such information relating to the named respondent may be released only to the respondent, the disciplinary board, and the grievance commission. If proceedings are initiated pursuant to Iowa Code section 602.10123, such information relating to the named accused may be released only to the accused and the attorney general or the special assistant attorney general designated pursuant to Iowa Code section 602.10127, to prosecute the charges.



**39.12(3) Commission subpoena authority.**

a. The commission shall have subpoena power during any investigation conducted on its behalf to compel the appearance of witnesses or the production of documents before the person designated to conduct the investigation on behalf of the commission.

b. The commission chair, or other commission member in the absence of the chair, shall have authority to issue a subpoena.

c. The district court for the county in which the investigation is being conducted shall have jurisdiction over any objection or motion relating to a subpoena and authority to punish disobedience of a subpoena in a contempt proceeding.

d. Counsel for the commission, the director, or any other person authorized to administer oaths shall have authority to administer an oath or affirmation to a witness.

[Court Order December 5, 1973; September 19, 1974; October 16, 1974; April 9, 1975; April 30, 1982; August 14, 1986, and August 18, 1986, effective September 2, 1986; May 10, 1990, effective July 2, 1990; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 9, 2003; April 20, 2005, effective July 1, 2005; December 5, 2007]

**Rule 39.13 Attorneys acting as fiduciaries.**

**39.13(1)** After January 1, 1974, unless a lawyer is the spouse of or is the son-in-law or daughter-in-law of or is related by consanguinity or affinity, within the third degree, to the decedent in an estate, the ward in a conservatorship, the settlor or beneficiary of a trust, or unless such attorney is coexecutor, cotrustee, or coconservator with another party or parties and such other party or parties will receive and pay out any of the funds, securities or other property of the estate, trust, or conservatorship, such lawyer shall not be appointed by a court in any fiduciary capacity for an estate, trust, or conservatorship until the lawyer has posted a bond in an amount to be determined by the court with sureties approved by the court, and no waiver of such bond shall be recognized by any court of this state. In the event the surety on the bond posted by the lawyer is not a corporate surety, the surety thereon shall not be the ward, any beneficiary or distributee or be related to the lawyer, the ward, or any beneficiary or distributee within the third degree of consanguinity or affinity.

**39.13(2)** A lawyer who willfully fails to comply with the provisions of this rule may be held in contempt of the supreme court, or may be subject to disciplinary action as provided in chapter 35 of the Iowa Court Rules.

[Court Order November 9, 2001, effective February 15, 2002]

See Iowa Code §§633.173, 633.175.

**Rule 39.14 Reinstatement from exemption or suspension.**

**39.14(1)** An attorney who has been suspended for failure to pay the annual fee or assessment or for failure to file the statement, supplement, or questionnaire required by these rules may be reinstated upon a showing that such failure was not willful and by filing the statement required by rule 39.8(1) and the questionnaire required by rule 39.11. An attorney seeking reinstatement after suspension for failure to comply with the provisions of this rule shall pay all delinquent fees, assessments and late filing penalties due under rules 39.5, 39.6 and 39.8, and a reinstatement fee of \$100.

**39.14(2)** An attorney who seeks or applies for reinstatement from suspension under chapter 35 must first file the statement required by rule 39.8(1) and the questionnaire required by rule 39.11, pay all fees, assessments, and late filing penalties due and unpaid under rules 39.5, 39.6, and 39.8 at the time of the suspension, pay the current fee and assessment required by rules 39.5 and 39.6, and pay a reinstatement fee of \$100.

**39.14(3)** An attorney who has been granted a certificate of exemption under the provisions of rule 39.7 may be reinstated after filing the statement required by rule 39.8(1) and the questionnaire required by rule 39.11, paying all late filing penalties due at the time the exemption was granted, and paying the current fee and assessment required by rules 39.5 and 39.6.

[Court Order April 25, 2008; August 10, 2009; November 20, 2015, effective January 1, 2016]

**Rule 39.15 Denial of reinstatement for failure to comply with certain obligations.**

**39.15(1)** *Denial of reinstatement for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with an obligation owed to or collected by the Centralized Collection Unit of the Department of Revenue. The procedure shall be governed by rule 35.22.

**39.15(2)** *Denial of reinstatement for failure to comply with an obligation owed to or collected by the College Student Aid Commission.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with an obligation owed to or collected by the College Student Aid Commission. The procedure shall be governed by rule 35.21.

**39.15(3)** *Denial of reinstatement for failure to comply with a support order.* The supreme court may deny an attorney's application for reinstatement under rule 39.14 for failure to comply with a support order. The procedure shall be governed by rule 35.20.

[Court Order June 5, 2008, effective July 1, 2008; February 20, 2012]

**Rule 39.16 Attorneys Practicing in Iowa Under the Multijurisdictional Practice Rule.** An attorney who establishes an office or other systematic and continuous presence in Iowa for the practice of law under the provisions of rule of professional conduct 32:5.5(d)(2) shall file the annual statement required by rule 39.8(1) and annual questionnaire required by rule 39.11, pay the annual fee and assessment due under rules 39.5 and 39.6, comply with all provisions of chapter 45, cooperate with investigations and audits under rule 39.10, and be subject to the provisions of rule 39.12.

[Court Order December 10, 2012]

**Rule 39.17 Collection of court costs and other fees.**

**39.17(1)** As a part of the annual statement provided by rule 39.8(1), the office of professional regulation must assess against each active attorney all fees, penalties, or court costs due any district court clerk or the clerk of the supreme court, or the office of professional regulation, and any client security trust fund claim reimbursement due the client security commission, that are a personal obligation of such attorney, as of the preparation date of the annual statement.

**39.17(2)** As a condition to continuing membership in the bar of the supreme court, including the right to practice before Iowa courts, every bar member must pay to the supreme court through the office of professional regulation, all fees, penalties, court costs, and client security trust fund claim reimbursements assessed on the annual statement.

**39.17(3)** Assessments are due on or before March 10 of each year.

**39.17(4)** The director of the office of professional regulation must pay to the state general fund all fees, penalties, and court costs due the state general fund and collected under this provision.

[Court Order November 20, 2015, effective January 1, 2016]

**Rule 39.18 Requirement for death or disability plan.**

**39.18(1)** Each sole practitioner must have a written plan that designates a primary and an alternate active Iowa attorney in good standing to review client files, notify each client of the attorney's death or disability, and determine whether there is a need for other immediate action to protect the interests of clients. The primary and alternate attorneys must consent in writing to their designation in the plan.

**39.18(2)** The plan must authorize the designated attorneys to prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records. The plan must identify the location of electronic files and records, authorize the designated attorneys to access electronic files and records as necessary to perform duties as a designated attorney, and provide the designated attorneys access to passwords and other security protocols required to access those electronic files and records.

**39.18(3)** The plan may authorize the designated attorneys to collect fees, pay firm expenses and client costs, compensate staff, terminate leases, liquidate or sell the practice, or perform other law firm administration tasks.

**39.18(4)** The plan must include language sufficient to make the designated attorneys' powers durable in the event of the sole practitioner's disability. *See* Iowa Code § 633B.1; Iowa R. Prof'l Conduct 32:1.3 cmt. [5].

**39.18(5)** The plan must be made available for review upon request by the director of the office of professional regulation or by any representative of the client security commission.

**39.18(6)** The plan must be reviewed and updated annually.

**39.18(7)** A designated attorney must not examine any documents or acquire any information containing real or potential conflicts with the designated attorney's clients. Should any such information be acquired inadvertently, the designated attorney must, as to such matters, protect the privacy interests of the planning attorney's clients by prompt recusal or refusal of employment.

**39.18(8)** For purposes of this rule, a sole practitioner includes an attorney practicing alone, an attorney practicing only with other attorneys who do not own equity in the practice, an attorney

practicing in an association of sole practitioners, or any other structure in which no other attorney owns equity in the practice.

[Court Order November 20, 2015, effective January 1, 2016; November 24, 2015, effective March 1, 2016; January 15, 2016, effective January 1, 2017]